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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1600

[Circular No. 2451]

Public Lands and Resources; Planning, Programming, and Budgeting

Under the authority of section 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711 and 1712), Subchapter A, Chapter II, Title 43 of the Code of Federal Regulations is amended by adding Part 1600 as set out below.

PART 1600—PLANNING, PROGRAMMING, BUDGETING

Subpart 1601—Planning

Sec.

1601.0–1 Purpose.
1601.0–2 Objective.
1601.0–3 Authority.
1601.0–4 Responsibilities.
1601.0–5 Definitions.
1601.0–6 Environmental Impact Statement Policy.
1601.0–7 Scope.
1601.0–8 Principles.
1601.1 Resources Management Planning—General.
1601.1–1 Guidance for planning.
1601.1–2 Planning area.
1601.1–3 Interdisciplinary approach.
1601.3 Public participation.
1601.4 Coordination with other Federal Agencies, State and local governments, and Indian Tribes.
1601.4–1 Coordination by State Directors.
1601.4–2 Coordination by District Manager.
1601.4–3 Consistency requirements.
1601.5 Resource management planning process.
1601.5–1 Identification of issues.
1601.5–2 Development of planning criteria.
1601.5–3 Inventory data and information collection.
1601.5–4 Analysis of the management situation.
1601.5–5 Formulation of alternatives.
1601.5–6 Estimation of effects of alternatives.
1601.5–7 Selection of preferred alternatives.
1601.5–8 Selection of resource management plan.
1601.5–9 Monitoring and evaluation.
1601.6 Resource management plan approval, use and modification.

Sec.

1601.6–1 Resource management plan approval and administrative review.
1601.6–2 Conformity and implementation.
1601.6–3 Changing the resource management plan.
1601.6–4 Situations where action can be taken based on another agency's plan or a land use analysis.
1601.6–5 Management decision review by Congress.
1601.6–6 Designation of areas unsuitable for surface mining.
1601.6–7 Designation of Areas of Critical Environmental Concern.
1601.7 Combined resource management plan and related environmental impact statement content and documentation.
1601.7–1 Process records.
1601.7–2 Authority annotations.
1601.7–3 Plan and environmental impact statement document.
1601.8 Transition period.

Authority: 43 U.S.C. 1740

§ 1601.0–1 Purpose.

The purposes of this subpart are (a) to establish in regulations a process for the development, approval, maintenance, amendment and revision of resource management plans for public lands administered by the Bureau of Land Management and (b) to set forth how existing plans or other data will be used until plans are developed under these regulations.

§ 1601.0–2 Objectives.

The objective of this subpart is to improve resource management decisions on public lands through a process of resource management planning that includes participation by the public and Federal, State and local governments, maximizing use of the best available data, and analysis of alternatives. Resource management plans are designed to guide and control future management actions and the development of subsequent more detailed and limited scope plans for resources and uses.

§ 1601.0–3 Authority.

These regulations are issued under the authority of sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711–1712); section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

§ 1601.0–4 Responsibilities.

(a) National level policy and procedure guidance for planning shall be provided by the Secretary and the Director. The Director may assume approval responsibility for a specific plan and related environmental impact statement if it is deemend necessary.

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(b) State Directors shall provide quality control for planning and related environmental impact statements and shall provide additional guidance, as necessary, for use by District Managers. State Directors shall file draft and final environmental impact statements associated with resource management plans and amendments.

(c) Resource Management plans, amendments, revisions, and related environmental impact statements shall be prepared by District Managers, and reviewed and concurred in by State Directors. Resource management plans, amendments and revisions are then approved by District Managers.

(d) Depending on the subject matter involved, the appropriate Bureau of Land Management official shall coordinate with other Federal agencies, State and local governments and Indian tribes.

§ 1601.0-5 Definitions.

As used in this subpart:

(a) "Applicant proposed action" means any resource use or development or management action proposed to the Bureau of Land Management by a member of the public or by another agency (not exclusively generated by the Bureau of Land Management) through any procedure established by regulations including nominations, petitions, and applications.

(b) "Areas of critical environmental concern" (ACEC) means areas within the public lands where special managment attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards. The identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands.

(c) "Conformity of conformance" means that a resource use or management action shall be specifically provided for in the plan, or if not so mentioned shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.

(d) "District manager" means the Bureau of Land Management line official in charge of a resource managing field office reporting to a State Director. In some cases (e.g., Eastern States) these officials may not be titled District Manager.

(e) "Goal" means the desired state or condition that a resouce management policy or program is designed to achieve. A goal is usually not quantifiable and may not have a specific date by which it is to be completed. Goals are the base from which objectives are developed.

(f) "Guidance" means any type of written communication or instruction which transmits objectives, goals, constraints or any other direction which helps the District Manager and staff know how to prepare a specific resource management plan.

(g) "Local government" means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulation authority.

(h) "Objectives" means planned results to be achieved within a stated time period. Objectives are subordinate to goals, are narrower and shorter in range, and have increased possibility of attainment. Time periods for completion, and outputs or achievement that are measurable and quantifiable, are specified.

(i) "Public" means affected or interested individuals, including consumer organizations, public land resource users, corporations and other busines entities, environmental organizations, and other special interest groups and officials of State, local, and Indian tribal governments.

(j) "Public lands" means any land or interest in land owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos.

(k) "Resource and resource management" is defined in the broadest sense and includes all public land values, renewable and non-renewable resouces of all types, supporting services such as fire control and cadastral survey, land use authorization and control, and land disposition, exchange or acquisition.

(l) "Resource area" means a geographic portion of a Bureau of Land Management district, under the supervision of an area manager. It is the smallest administrative subdivision in the Bureau and is, in most instances, the area for which resource management plans are prepared and maintained.

(m) "Resource management plan" means a land use plan as prescribed by the Federal Land Policy and Management Act. The resource management plan establishes in a written document—

(1) Land areas for: limited, restrictive or exclusive use; designation, including ACEC designation; and transfer from Bureau of Land Management Administration;

(2) Allowable resource uses (either singly or in combination) and related levels of production or use to be maintained, including appropriate threshold levels;

(3) Resource condition goals and objectives to be attained;

(4) Program constraints and general management practices needed to achieve the above items;

(5) Need for and area to be covered by more detailed and specific plans;

(6) Support action necessary to achieve the above, including as a minimum:

(i) Resource protection, such as avoidance or mitigation of trespass, fire or insect damage,

(ii) The general transportation system required for legal and physical access,

(iii) General cadastral survey or property line identification, and

(iv) Withdrawals and other realty action;

(7) General implementation sequences, where carrying out a planned action is dependent upon prior accomplishment of another planned action; and

(8) Intervals and standards for monitoring and evaluating the plan to determine the effectiveness of the plan and the need for amendment or revision.

A resource management plan is not a final implementation decision on actions which require further specific plans, process steps or decisions under specific provisions of law and regulations.

(n) "Capability" means the ability or potential of a unit of land to produce resources, supply goods and services or allow resource uses under a set of management practices at a given level of management intensity without permanently impairing the resource involved. Capability depends upon a fixed set of conditions which are relatively stable over time, including, but not limited to, climate, slope, landform, soils and geology. Most land has an inherent capability to produce one or more resources, or goods and services, or allow resource uses, under natural conditions. Capability analyses shall permit identification of specific uses or management practices that cannot be allowed on specific land areas due to physical conditions.

(o) "Threshold levels" are specific defined levels of resource use, production or development which are established as maximum or minimum constraints in the resource management plan. They are established for defined geographic areas but are not site specific. For example, they may include a maximum or minimum level of winter wildlife habitat which is to be maintained or tonnage of coal that could

be made available over a specified time period. Threshold levels are usually established to ensure that the plan does not permit an unacceptable level of cumulative impacts.

(p) "Threshold analysis" is the process of comparing possible threshold levels to anticipated cumulative impacts and establishing that point where an additional increment in the threshold will make a major change in impact.

§ 1601.0-6 Environmental Impact Statement Policy.

Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. The environmental analysis of alternatives and the proposed plan shall be accomplished as part of the resource management planning process. The proposed plan and related environmental impact statement shall be published as a single document.

§ 1601.0-7 Scope.

(a) These regulations apply to all BLM administered public lands, including any public land area subject to acts of Congress such as the Wild and Scenic Rivers Act, the O&C Act of 1937, National Trails System Act, the Wilderness Act, and national recreation areas acts, and other similar statutes specifically designating lands for particular uses.

(b) These regulations also govern the preparation of resource management plans when the only public land interest is the mineral estate. Since the use planned for the federally-owned minerals could have a major impact on the nonpublic land surface, the views and concerns of owners of the surface shall be obtained and considered.

§ 1601.0-8 Principles.

The preparation, amendment and revision of resource management plans shall be consistent with the following principles:

(a) The principles of multiple use and sustained yield set forth in the Federal Land Policy and Management Act and other applicable laws shall be adhered to:

(b) A systematic interdisciplinary approach shall be used to achieve intergrated consideration of physical, biological, economic, social and other sciences, and the environmental design arts;

(c) Priority shall be given to the identification, designation, protection and special management of ACEC's;

(d) The relative significance of the public land products, services, and uses to local economies shall be considered;

(e) To the extent it is available, the inventory of the public lands, their resources, and other values shall be relied upon;

(f) Present and potential uses of the public lands shall be considered;

(g) Impact on uses of adjacent or nearby non-Federal lands and on non-public land surface over federally-owned minerals shall be considered;

(h) The relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values shall be considered;

(i) Long term benefits and detriments to the public shall be weighed against short term benefits and detriments;

(j) Compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans shall be provided for;

(k) To the extent consistent with the laws governing the administration of the public lands, the resource inventory, planning, and management activities of or for such lands shall be coordinated with the resource planning and management programs of other Federal departments and agencies, States and local governments, and Indian tribes; and

(l) The public shall be provided with early notice and frequent opportunity to participate in and comment on the preparation of plans and related guidance.

§ 1601.1 Resource Management Planning—General

§ 1601.1-1 Guidance for planning.

Guidance for preparation and amendment of resource management plans shall be provided, as needed, by the Director and State Director. Such guidance shall be limited to the following items which shall be in writing and available for public review in State and District offices.

(a) National level policy which has been established through legislation, regulations, executive orders or other Presidential, Secretarial or Director approved documents. This policy may include appropriately developed resource management commitments, such as a right-of-way corridor crossing several resource areas.

(b) Guidance which has been developed at the State Director level, with necessary and appropriate governmental coordination as prescribed by § 1601.4 of this title, to indicate specific goals, objectives, priorities, alternatives, values, constraints or other items which are to be considered in the resource management process in the State. As relevant, this guidance shall be reflected or incorporated in the planning process actions required by §§ 1601.5–1 through 1601.5–9 of this title and shall be subject, through those processes, to the public review and discussion prescribed by § 1601.3 of this title and the environmental analysis prescribed by § 1601.5–6 of this title. Such guidance shall be reconsidered by the State Director at any time during the planning process if it is found, through public involvement or other means, to be inappropriate when applied to the resource values and conditions found in a specific area being planned. Such change shall not violate national policy.

(c) Procedures which shall be used to implement these regulations.

(d) Schedules, budgets and organizational coordination requirements.

§ 1601.1-2 Planning area.

Resource management plans shall be prepared and maintained for resource areas. If an individual resource area is not an appropriate area for a resource management plan, the Director may authorize a more appropriate planning area.

§ 1601.1-3 Interdisciplinary approach.

An interdisciplinary approach, including the use of an interdisciplinary team at each step of the planning process as prescribed under §§ 1601.5–1 through 1601.5–9 of this title, shall be used in the preparation, amendment and revision of resource management plans to ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers shall be appropriate to the values involved and the issues identified during the issue identification and environmental impact statement scoping stage of the planning process. The District Manager shall use whatever combination of BLM staff, consultants, contractors, other governmental personnel and advisors as necessary to achieve this objective.

§ 1601.3 Public participation.

(a) The Director shall, early in each fiscal year, publish a planning schedule which shall advise the public of the status of each plan in process or to be started during that fiscal year, the major action on each plan during that fiscal year and projected new planning starts for the 3 succeeding fiscal years. The

notice shall call for comments on planning priorities for those 3 fiscal years so that such comments can be considered in refining priorities for those years.

(b) Public participation shall be sought and used throughout the preparation, amendment or revision of resource management plans. (See additional provisions for governmental coordination in § 1601.4 of this title.)

(c) A public participation plan shall be prepared to guide public involvement in the preparation, amendment or revision of each resource management plan. The public participation plan shall be initiated prior to the issue identification stage of the planning process and shall be updated thereafter as necessary.

(d) The purpose of public participation is to—

(1) Inform the public of Bureau of Land Management resource management planning activities;

(2) Provide the public with an understanding of Bureau of Land Management programs and proposed actions;

(3) Ensure the public needs and concerns are understood by the Bureau of Land Management; and

(4) Broaden the information base upon which resource management planning decisions are made.

(e) Public notice and opportunity for participation in specific resource management plan preparation is mandated at 5 specific points in the planning process:

(1) General notice at the outset of the process which invites participation in the identification of issues (see §§ 1601.3(g) and 1601.5–1);

(2) A notice inviting comment on the planning criteria (see § 1601.5–2);

(3) Publication of the draft plan and draft environmental impact statement;

(4) Publication of the final plan and final environmental impact statement which triggers the opportunity for protest (see §§ 1601.5–8 and 1601.6–1(c)); and

(5) Public notice and comment on any significant change made to the plan as a result of action on a protest.

Additional public involvement shall be provided as appropriate and as guided by the public participation plan.

(f) Public participation activities and means of notification shall be appropriate to the areas and people involved, and the stage of planning (preparation, amendment or revision). Public participation activities may include requests for written comments, surveys, meetings, hearings, conferences, seminars, workshops, tours, and similar events scheduled and held to foster public reactions and suggestions.

(g) Upon starting the preparation amendment or revision of resource management plans, public participation shall be initiated by a notice published in the Federal Register and appropriate media, including newspapers of general circulation in the State, adjoining States where it is deemed appropriate, and the District. The notice shall include the following information:

(1) Description of the proposed planning action;

(2) Identification of the geographic area to be planned;

(3) The general types of issues anticipated;

(4) The disciplines to be represented on the interdisciplinary team;

(5) The kind and extent of public participation activities to be provided;

(6) The times, dates, and locations scheduled or anticipated for any needed public meetings, hearings, conferences or other gatherings, as known at that time;

(7) The name, title, address, and telephone number of the Bureau of Land Management offical who may be contacted for further information; and

(8) The location and availability of documents relevant to the planning process.

(h) Public participation in the preparation of a draft environmental impact statement shall begin with the publication of a notice of intent in the Federal Register which is the notice described in paragraph in (g) of this section. After this publication, public participation opportunities for planning and those required by the National Environmental Policy Act, shall be provided simultaneously.

(i) At least 15 days' public notice shall be given for public participation activities where the public is invited to attend a meeting of some sort. Any notice requesting written comments shall provide for at least 30 calendar days for response. Ninety days shall be provided for review of the draft plan and draft environmental impact statement.

(j) A list of individuals and groups known to be interested in or affected by a resource management plan shall be maintained by the District Manager. Individuals or groups may ask to be placed on this list. All individuals and groups on this list shall be notified of public participation activities.

(k) The responsible Bureau of Land Management official or his or her representative shall attend all Bureau of Land Management scheduled and conducted public participation activities.

(l) All Bureau of Land Management scheduled public participation activities shall be documented by a summary of the principal issues discussed, comments made, and a register of those in attendance. The summary shall be available for public review and open for addition of comment by any participant who wishes to clarify or add to views he or she expressed.

(m) Copies of an approved resource management plan and amendments shall be reasonably available for public review. This includes copies at the State Office for that district, that District Manager's Office, and district offices contiguous to that district, detached area offices in that district, and those detached area offices in other districts that are contiguous to that district, and at least one additional location determined by the District Manager which offers convenient access to the public. Plans, amendments and revisions shall be published and single copies shall be available to the public on request.

(n) Supporting documents to plans shall be available for public review at the office where the plan was developed.

(o) Fees for reproducing requested documents beyond those used as part of public participation activities and other than the single copies of the printed plan, amendment or revision, may be charged according to the Bureau of Land Management schedule for Freedom of Information Act requests in 43 CFR Part 2.

(p) When resource management plans involve areas of potential mining for coal, by means other than underground mining, and the surface is private, the Bureau of Land Management shall consult with all surface owners who (1) hold legal or equitable title to the land surface, and (2) have their principal place of residence on the land or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations. This contact shall be made after the review in the planning process which assesses whether there are areas unsuitable for coal leasing to avoid contacting owners where the land would not be considered for coal leasing based on unsuitablility criteria specified in § 3461.2 of this title. Contact shall be made in time to fully consider the owner's views. This contact may be made by mail or in person by the

District Manager or his or her representative. A period of at least 30 days from the time of contact shall be provided for the surface owners to provide their preference to the District Manager. Such surface owners preferences shall be considered as specified in § 3420.2–3 of this title.

(q) If the plan involves potential for coal leasing, a public hearing shall be provided prior to the approval of the plan if requested by any person having an interest which is, or may be, adversely affected by implementation of such plan. The hearing shall be conducted as prescribed in § 3420.2–4 of this title and may be combined with a regularly scheduled public meeting.

§ 1601.4 Coordination with other Federal agencies, State and local governments, and Indian tribes.

In addition to the public involvement prescribed by § 1601.3 of this title the following coordination is to be accomplished with other Federal agencies, State and local governments, and Indian tribes. The objectives of the coordination are for State Directors and District Managers to keep apprised of non-Bureau of Land Management plans; assure that consideration is given to those plans that are germane in the development of resource management plans for public lands; assist in resolving, to the extent practicable, inconsistencies between Federal and non-Federal government plans; and provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and Indian tribes in the development of resource management plans, including early public notice of proposed decisions which may have a significant impact on non-Federal lands.

§ 1601.4–1 Coordination by the State Director.

State Directors' coordination shall include the following:

(a) State Directors shall coordinate with and seek advice from Federal agencies, State governments, and Indian tribes, to understand and consider their needs and concerns.

(b) To facilitate coordination with State government, State Directors shall seek written agreements with Governors or their designated representatives on procedural topics such as exchanging information, providing advice and participation, and time frames for receiving State government participation and review in a timely fashion. If an agreement is not reached the State Director shall provide opportunity for Governor and State agency review, advice, and suggestions on issues and topics that the State Director has reason to believe could affect or influence State government programs.

(c) Before issuing guidance to District Managers, in compliance with § 1601.1–1 of this title, the State Director shall:

(i) Ensure that it is as consistent as possible with existing officially adopted and approved resource related policies, plans or programs of other Federal agencies, State agencies and Indian tribes, and any local governments that may be affected, as prescribed by § 1601.4–3 of this title; and

(ii) Identify areas where the proposed guidance is inconsistent with such policies, plans or programs and provide reasons why the inconsistency exists and cannot be remedied; and

(iii) Notify the other Federal agencies, State agencies or Indian tribes with whom consistency is not achieved and indicate any appropriate methods, procedures, actions and/or programs which may lead to resolution of such inconsistencies.

§ 1601.4–2 Coordination by the District Manager.

District Manager's coordination shall include the following:

(a) The District Manager shall submit a notice of intent to prepare, amend or revise a resource management plan along with a general schedule of anticipated planning steps to the State Clearinghouse (OMB Circular A–95) for circulation among State agencies. This notice shall also be mailed to (1) concerned Federal agencies that have requested such notices, or that the District Manager has reason to believe would be concerned with the plan, (2) All Tribal Chairmen or Alaska Native Leaders to the extent Indian Reservations, Alaska Native Regional Corporations or Village Corporations are impacted, (3) the heads of county boards for the counties that are involved as well as the heads of any other local government units having zoning or other land use regulatory jurisdiction in the geographical area within which the public lands are located, (4) designated areawide clearinghouses, and (5) any other State or local government agencies which ask to be placed on such a mailing list. These notices shall be issued simultaneously with the public notices required under § 1601.3(g) of this title.

(b) Early data exchange, consultation, and coordination are encouraged to avoid duplication of data collected and to improve the information base for planning.

(c) Resource management plans shall be coordinated with other Federal agencies, State and local governments and Indian tribes. The plans shall be made as consistent as practicable with officially approved and adopted resource related policies, plans and programs of other Federal agencies, State and local governments and Indian tribes as prescribed in § 1601.4–3 of this title.

(d) Federal agencies, State and local governments, and Indian tribes shall have the time periods prescribed under § 1601.3(i) of this title for review and comment on resource management plan proposals. Should they notify the District Manager, in writing, of what they believe to be specific inconsistencies between the Bureau of Land Management resource management plan, and their plans, the resource management plan documentation shall show how those inconsistencies were addressed and if possible resolved.

(e) When an Advisory Council has been formed under section 309 of the Federal Land Policy and Management Act for the district in which the resource area is located, that council shall be informed and their views sought and considered throughout the resource management planning process.

§ 1601.4–3 Consistency requirements.

(a) Guidance and resource management plans shall be consistent with officially approved or adopted resource related plans of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal law and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise and other pollution standards or implementation plans.

(b) Guidance and resource management plans shall, to the extent practicable be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian tribes to the extent provided in Paragraph (a) of this Section so long as the guidance and resource management plans are consistent with Secretarial policies and programs. It is the Department's intent to be as consistent as practicable with State and local governmental and Indian tribal policies and programs.

(c) State Directors and District Managers shall, to the extent practicable, keep apprised of State and local governmental and Indian tribal policies, plans and programs, but they shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.

(d) Where State and local government policies, plans and programs differ, that of higher authority will normally be followed.

§ 1601.5 Resource management planning process.

In the preparation, or revision of a resource management plan and in evaluating its impact, a process including the following systematic set of interrelated actions shall be used. Some actions may occur simultaneously and it may be necessary to repeat an action as additional information becomes available. The environmental analysis requirements of the National Environmetal Policy Act shall be included in this process.

§ 1601.5-1 Identification of issues.

At the outset of the planning process, the public, other Federal agencies, State and local governments and Indian tribes shall be given an opportunity to suggest concerns, needs and resource use, development and protection opportunities for consideration in the preparation of the resource management plan. The District Manager shall analyze those suggestions, plus available district records of resource conditions, trends, needs and problems, and select topics to be addressed as issues during the planning process. This action shall be repeated as necessary during the planning process to incorporate new information. This action, plus the development of planning criteria (§ 1601.5-2) shall also comply with the scoping process required by 40 CFR 1501.7.

§ 1601.5-2 Development of planning criteria.

(a) *Purpose and use of criteria.* The District Manager shall prepare criteria to guide development of the resource management plan, or revision, to insure that it is tailored to the issues previously identified and to insure that unnecessary data collection and analyses are avoided. Proposed planning criteria, including any significant changes, shall be published for public comment prior to being approved by the District Manager for use in the planning process. Planning criteria shall be written and included in the draft and final plan. Planning criteria shall guide the collection and use of inventory data and information, the analysis of the management situation, the design and formulation of alternatives, and the estimate of effects of alternatives. Planning criteria shall be used to evaluate alternatives and to select one alternative to serve as the proposed resource management plan. Planning criteria may need to be changed as planning proceeds, based on public suggestions and findings of the various studies and assessments. A written, publically available record shall be made of any significant change in the criteria.

(b) *Basis for criteria.* Generally, planning criteria shall be based on:

(1) Laws, executives orders, and regulations;

(2) The principles cited under 1601.0-8 of these regulations;

(3) National and State Director guidance applicable to that resource area;

(4) The results of public participation and coordination with Federal agencies, State and local governments and Indian tribes;

(5) Analysis of data and information needs and related decision strategy in accordance with the following policy:

(i) Inventory data and other information collection shall be focused on that needed for topics to be addressed in the planning process; that needed to identify values which by legislation or national policy require special attention; and that needed to establish the condition and capability of the public land resource for consideration during both plan formulation and monitoring processes.

(ii) Inventory data and other information collection shall be pursued to the greatest extent possible within the constraints of budgets provided for such collection.

(iii) When time and funds for inventory data and other information collection are limited, and in developing budget proposals, priority shall be given to information and inventory data collection related to potential decisions with greatest impact and to which additional information and data would make the greatest difference.

(iv) When circumstances require that a planning decision be made, but there is insufficient inventory data or other information, the decision shall preserve future resource options and avoid irreversible commitments to the degree practicable. The plan and environmental impact statement documentation shall include a worst case analysis (see 40 CFR 1502.22) and an indication of the probability or improbability of its occurrence. The monitoring and evaluation standards and intervals prescribed by the plan shall be designed to minimize the risk of unacceptable results from plan implementation.

§ 1601.5-3 Inventory data and information collection.

The District Manager shall arrange for resource, environmental, social, economic, and institutional data and information to be collected, or assembled if already available, with pertinent maps, graphic material, and explanatory aids, as prescribed by planning criteria. Inventory data and information needs may vary as issues develop or change during the planning process.

§ 1601.5-4 Analysis of the management situation.

(a) The District manager shall analyze the management situation to determine the capability of the public land resources to respond to: Needs, concerns and opportunities identified through public participation and coordination with Federal agencies, State and local governments and Indian tribes; issues defined earlier in the planning process; and national and State Director guidance. Factors to consider may include, but are not limited to—

(1) The types of resource use and protection authorized by the Federal Land Policy and Management Act and other relevant legislation;

(2) Opportunities to meet goals and objectives defined in national and State Director guidance;

(3) Resource demand forecasts and analyses relevant to the resource area;

(4) The estimated sustained levels of the various goods, services and uses that may be attained under existing biological and physical conditions and under differing management practices and degrees of management intensity which are economically viable under benefit cost or cost effectiveness standards prescribed in national or State Director guidance;

(5) Specific requirements and constraints to achieve consistency with policies, plans, and programs of other Federal agencies, State and local government agencies and Indian tribes;

(6) Opportunties to resolve public issues and management concerns;

(7) Degree of local dependence on resources from public lands;

(8) The extent of coal lands which may be further considered under provisions of § 3420.2-3(a) of this title; and

(9) Critical threshold levels which should be considered in the formulation of plan alternatives.

(b) In all cases, the inventory data shall be analyzed to determine whether there are areas containing resources, values, systems or processes or hazards eligible for further consideration for designation as an ACEC. In order to be considered eligible, all 4 of the following criteria shall be met.

(1) *Relevance.* There shall be present a historic, cultural or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard.

(2) *Importance.* The above described value, resource, system, process or hazard shall be important. This requires qualities of more-than-local significance and special worth, consequence, meaning, distinctiveness or cause for concern. A natural hazard can be important if it is a significant threat to human life or property.

(3) *Criticalness.* The qualities making the value, resource, system, process or hazard important are being subjected to decisive adverse change, such as through damage, reduction or other loss, or vulnerable to such adverse change unless special management attention is applied.

(4) *Protectability.* The value, resource, system or process shall be capable of being protected from decisive adverse change with the special management attention that can feasibly be applied. A natural hazard shall be of such a nature that the risk to human life or property it constitutes can, as a practicable matter, be reduced by special management attention that can feasibly be applied.

§ 1601.5–5 Formulation of alternatives.

Several complete, reasonable resource management alternatives shall be prepared for the resource area. One shall be for no action which means continuation of present levels or systems of resource use. The other alternatives shall provide a range of choices from those favoring resource protection to those favoring resource production. They shall reflect the variety of opinion and guidance applicable to the resource area. The total number of alternatives shall be limited to a manageable number for presentation and analysis by treating all reasonable variations as subalternatives. The plan shall note any alternatives identified and eliminated from detailed study and shall briefly discuss the reasons for their elimination.

§ 1601.5–6 Estimation of effects of alternatives.

The District Manager shall estimate and display the physical, biological, economic, and social effects of implementing each alternative. The estimate may be stated in terms of probable ranges, where effects cannot be precisely determined. The documentation shall include an indication of the reliability of the data and estimates involved. Estimation of effects shall be guided by planning criteria and shall comply with National Environmental Policy Act regulations, (40 CFR 1502.16).

§ 1601.5–7 Selection of preferred alternatives.

The District Manager shall evaluate the alternatives and their effects, according to the planning criteria, and develop a preferred alternative, based on information and analysis developed up to this point in the planning process, which shall best meet national and State Director guidance. The preferred alternative shall be incorporated into the draft plan and draft environmental impact statement. The resulting document shall be forwarded to the State Director for concurrence, publication and filing with the Environmental Protection Agency. This draft plan and environmental impact statement shall be provided to the Governor of the State involved in accordance with § 3420.2–6 of this title.

§ 1601.5–8 Selection of resource management plan.

After publication of the draft plan and draft environmental impact statement, the District Manager shall evaluate the comments received and select and recommend to the State Director, for review and concurrence, a proposed resource management plan and final environmental impact statement using current planning criteria developed pursuant to § 1601.5–2 of this title. If the proposed resource management plan is not within the range of the alternatives in the draft plan and draft environmental impact statement, and the environmental impact is significantly different, a new draft plan and draft environmental impact statement shall be prepared and filed. After review and concurrence in the proposed resource management plan, the State Director shall publish and file the plan and related environmental impact statement.

§ 1601.5–9 Monitoring and evaluation.

The District Manager shall establish intervals of not more than 5 years and standards for monitoring and evaluating the plans. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether any established threshold levels have been met or exceeded, whether there has been significant change in the related plans of other Federal agencies, State or local governments or Indian tribes, or whether there is new data of significance to the plan. The District Manager shall monitor and evaluate the plan in accordance with the established intervals and standards to determine whether there is sufficient cause to warrant amendment or revision of the plan. Monitoring and evaluation reports shall be written and available for public review.

§ 1601.6 Resource management plan approval use, and modification.

§ 1601.6–1 Resource management plan approval and administrative review.

(a) When the District Manager transmits the proposed resource management plan or revision to the State Director for review and concurrence, the State Director shall take either of the following actions, which shall be documented, in writing:

(1) Concur in the proposed plan, and return it to the District Manager for approval; or

(2) Refuse to concur in all or some aspect of the proposed plan. If concurrence cannot be granted, the proposed plan shall be returned to the District Manager with a written statement of reasons for nonconcurrence. The planning process shall be repeated as necessary to resolve the problems identified by the State Director.

(b) If the State Director considers an environmental value, resource, system or process within an area being proposed for ACEC designation to be of national or international significance, the State Director shall so advise the Director and provide reasons. If the Director makes such a finding, the Director may concur in the proposed designation. Subsequently, no plan, amendment or revision that adversely affects the ACEC can be made without the concurrence of the Director.

(c) Upon receipt of concurrence from the State Director, and no earlier than 30 days after the State Director files the final environmental impact statement, and subsequent to final action on any protest that may be filed, the District Manager shall approve the plan. Approval shall be withheld on any

portion of a plan or amendment being protested until final action has been completed on such protest. Before such approval is given, there shall be public notice and opportunity for public comment on any significant change made to the proposed plan. The approval shall be documented in a concise public record of the decision, meeting the requirements of regulations for the National Environmental Policy Act (40 CFR 1505.2).

(d) Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record to the District Manager during the planning process.

(1) The protest shall be in writing and shall be filed with the State Director in the State where the area covered by the plan or amendment is located. The protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the final environmental impact statement containing the plan or amendment in the Federal Register. For an amendment not requiring the preparation of an environmental impact statement, the protest shall be filed within 30 days of the publication of the notice of its effective date.

(2) The protest shall contain:

(i) The name, mailing address, telephone number and interest of the person filing the protest;

(ii) A statement of the issue or issues being protested;

(iii) A statement of the part or parts of the plan or amendment being protested;

(iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

(v) A short, concise statement explaining why the District Manager's decision is wrong.

(3) The State Director shall promptly render a decision on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.

(e) The decision of the State Director, as it relates to any issue that cannot, upon the issuance of a decision, be appealed under Part 4 of this title or any other protest procedure provided for in this title, may be protested to the Director within 30 days of receipt of the State Director's decision by a protesting party adversely affected by said decision.

(1) The protest shall contain:

(i) The name, mailing address, telephone number and interest of the person filing the protest; and

(ii) A short, concise statement explaining why the State Director's decision is wrong.

(2) The Director shall, within 30 days of receipt of the protest, review the protest and notify the protesting party whether supervisory authority to review the protest shall be exercised. If supervisory authority is not exercised, the decision of the State Director shall become the final decision of the Department of the Interior. If the Director notifies the protesting party that supervisory authority to review is being exercised, a decision shall be promptly rendered on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.

(3) The decision of the Director shall be the final decision of the Department of the Interior.

§ 1601.6-2 Conformity and implementation.

(a) After a plan is approved or amended, and if otherwise authorized by law, regulation, contract, permit, cooperative agreement or other instrument of occupancy and use, the District Manager shall take appropriate measures to make operations and activities under existing permits, contracts, cooperative agreements or other instruments for occupancy and use, conform to the approved plan or amendment within a reasonable period of time.

(b) In addition, subsequent more detailed or specific planning, and all future resource management authorizations and actions, as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department, shall conform to the plan.

(c) Any person adversely affected by a specific action being proposed to implement some portion of a resource management plan or amendment may appeal such action pursuant to 43 CFR 4.400.

§ 1601.6-3 Changing the resource management plan.

(a) *Maintenance.*—Resource management plans and supporting components shall be maintained as necessary to reflect minor changes in data. Such maintenance may include further refining, constraining or documenting a previously approved decision incorporated in the plan. Updating and maintenance shall not result in expansion in the scope of the resource use or its location in the resource area, from that prescribed in an approved plan. Maintenance is not considered a plan amendment and shall not require the formal public involvement and interagency coordination process described under §§ 1601.3 and .4 of this title or the preparation of environmental assessments or environmental impact statements.

(b) *Amendment.*—A resource management plan may be changed through amendment. An amendment is initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or an applicant's proposed action, which may result in a significant change in a portion of the approved plan. An amendment shall be made through an environmental assessment, public involvement as prescribed in § 1601.3 of this title, interagency coordination and consistency determinations as prescribed in § 1601.4 of this title and any other data or analysis that may be appropriate. In all cases, the impact of the amendment on the plan shall be evaluated. If the amendment is being considered in response to an applicant's proposal, the analysis required for the proposal and for the amendment may occur simultaneously.

(1) If the environmental assessment does not disclose significant impact and if the amendment does not adversely affect a value, resource, system or process within an ACEC in which the Director has concurred in the designation, a finding of no significant impact may be made by the District Manager. The District Manager shall then make a recommendation on the amendment to the State Director for concurrence, and upon concurrence, the District Manager shall issue a public notice of the action taken on the amendment. If the amendment is approved, it may be implemented 30 days after such notice.

(2) If the amendment would adversely affect a value, resource, system or process within an ACEC in which the Director has concurred in the designation, or if a decision is made to prepare an environmental impact statement, the amending process shall follow the same procedure required for the preparation and approval of the plan, but limited to that portion of the plan being considered for amendment. If

several plans are being amended simultaneously, a single environmental impact statement may be prepared to cover all amendments.

(c) *Revisions.* A resource management plan shall be revised at least every 10 years, based on monitoring and evaluation findings, new data, new or revised policy and changes in circumstances affecting the entire plan or major portions of the plan. Revisions shall comply with all of the requirements of these regulations for preparing and approving an original resource management plan.

§ 1601.6–4 Situations where action can be taken based on another agency's plan, or a land use analysis.

These regulations authorize the preparation of a resource management plan for whatever public land interests exist in a given land area. There are situations of mixed ownership where the public land estate is under non-Federal surface, or mixed administration where the public land administration is shared by the Bureau of Land Management with another Federal agency. The following provisions authorize the District Manager to use the plans of other agencies or a land use analysis when split or shared estate conditions exist.

(a) Another agency's plan (Federal, State or local) may be used as a basis for an action only if it is comprehensive and has considered the public land interest involved in a way comparable to the manner in which it would have been considered in a resource management plan, including the opportunity for public participation.

(b) After evaluation and review, the Bureau of Land Management may adopt another agency's plan for continued use as a resource management plan if an agreement is reached between the Bureau of Land Management and the other agency to provide for maintenance and amendment of the plan, as necessary, to comply with law and policy applicable to public lands.

(c) A land use analysis may be used to consider a coal lease when there is no Federal ownership interest in the surface or when coal resources are insufficient to justify plan preparation costs. The land use analysis process, as authorized by the Federal Coal Leasing Amendments Act consists of an environmental assessment or impact statement, public participation as required by § 1601.3 of this title, the consultation and consistency determinations required by § 1601.4 of this title, the protest procedure prescribed by § 1601.6–1 of this title and a decision on the coal lease proposal. A land use analysis meets the land use planning requirements of section 202 of the Federal Land Policy and Management Act. The decision to approve the land use analysis and lease coal is made by the Departmental official who has been delegated the authority to issue coal leases.

§ 1601.6–5 Management decision review by Congress.

The Federal Land Policy and Management Act requires that any Bureau of Land Management management decision, or action pursuant to a management decision, which totally eliminates one or more principal or major uses for two or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congress before it can be implemented. This report shall not be required prior to approval of a resource management plan which, if fully or partially implemented would result in such an elimination. The required report shall be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use.

§ 1601.6–6 Designation of areas unsuitable for surface mining.

(a)(1) The resource management planning process is the chief process by which public land is reviewed to assess whether there are areas unsuitable for surface coal mining operations under section 522(b) of the Surface Mining Control and Reclamation Act. Criteria for this assessment are found in § 3461.2 of this title.

(2) When petitions to designate land unsuitable under section 522(c) of the Surface Mining Control and Reclamation Act are referred to the Bureau of Land Management for comment, the resource management plan, if available, shall be the basis for comment. Formal designation of land as unsuitable is a function of the Office of Surface Mining Reclamation and Enforcement under the provisions of 30 CFR Subpart 769.

(3) In approving a resource management plan in which land is assessed unsuitable, the District Manager shall:

(i) Condition any leasing of the area for coal development; or

(ii) After approving a resource management plan, take all necessary steps to initiate the withdrawal of the land from leasing for coal development.

The District Manager shall petition the Office of Surface Mining Reclamation and Enforcement to designate the area as unsuitable under 30 CFR Subpart 769 where the land assessed as being unsuitable is covered by a coal lease on which operations are not exempted or excepted from the relevant criterion.

(b)(1) The resource management planning process is the chief process by which public land is reviewed for designation as unsuitable for entry or leasing for mining operations for minerals and materials other than coal under section 601 of the Surface Mining Control and Reclamation Act.

(2) When petitions to designate land unsuitable under section 601 of the Surface Mining Control and Reclamation Act are received by the Bureau of Land Management, the resource plan, if available, shall be the basis for determination for designation.

(3) In approving a resource management plan in which land is designated unsuitable, the District Manager shall: (i) Condition any entry or leasing of the area for mining operations for minerals or materials other than coal; or (ii) after approving a resource management plan, take all necessary steps to initiate the withdrawal of the land from entry or leasing for mining operations for minerals or materials other than coal.

§ 1601.6–7 Designation of Areas of Critical Environmental Concern.

Areas having potential for ACEC designation and protective management shall be identified and considered throughout the planning process (See §§ 1601.5–1 through 1601.5–9). Approval of a resource management plan constitutes formal designation of any ACECs involved.

§ 1601.7 Combined resource management plan and related environmental impact statement content and documentation.

§ 1601.7–1 Process records.

Records pertaining to the analysis and conclusions reached by the District Manager and staff throughout the planning and environmental analysis process shall be maintained. Such records shall provide the basis for the draft and final environmental impact statements and the development of, revision, or amendment to, the resource management plan. Such records shall be kept filed together and shall be available, on request, for public review.

§ 1601.7–2 Authority annotations.

The resource management plan and alternatives shall be annotated to show:

(a) Portions that may be implemented pursuant to authority delegated to the State Director.

(b) Portions that are not within the State Directors delegated authority and

the organizational unit or officer that has such authority.

§ 1601.7–3 Plan and Environmental Impact Statement document.

There shall be a single document (in separate volumes, if necessary) in a standard format serving as both a resource management plan and environmental impact statement. It shall contain at least:

(a) A brief description of the major issues and management concerns;

(b) The planning criteria used in its preparation;

(c) Descriptions and appropriate maps of the area covered;

(d) Goals, objectives and other direction from national policy, State Director guidance, and public participation;

(e) Details of the plan, including items (1) through (8) from the definition of the term "resource management plan" (see § 1601.0–6(n)). This portion of the plan may be organized into separate discrete sections which comprehensively cover major issues or topics so that the reader is able to find all relevant conclusions about an issue or topic. In all cases where an ACEC or coal is involved, there shall be discrete sections which provide—

(1) An identification of each designated ACEC, including the name, purpose and objective of designation, a description of environmental resources or hazards involved together with an evaluation of their relevance, importance, criticalness and protectability, and their special management requirements.

(2) An identification of high and medium value coal areas, indicating those lands acceptable for further consideration for coal leasing and how the Departmental unsuitable criteria were applied (see §§ 3420.2–3 and 3461 of this title).

(f) Alternatives considered;

(g) Alternatives eliminated from study and a brief discussion of the reasons;

(h) An analysis of the environmental impacts of the proposed plan and alternatives considered;

(i) Reasons for the alternative selected and, when it differs from the environmentally preferred alternative, the environmentally preferred alternative shall be identified as required by 40 CFR 1505.2(b);

(j) Relationship between the proposed plan and policies, plans, and programs of other Federal agencies, State and local government plans, Indian Tribes, including documentation required on consistency issues;

(k) List of preparers, together with their qualifications, as prescribed by 40 CFR 1502.17;

(l) Signature of concurring and approving officers; and

(m) Appropriate references to information used in development of the resource management plan.

§ 1601.8 Transition period.

(a) All management framework plans in the process of being prepared at the time these regulations are issued shall be reviewed, and the Director shall establish those portions of these regulations which are to be used in the completion of those plans, given time and budgetary constraints established through Federal budgets and legally mandated schedules. This determination shall be made and published in the planning schedule which is to be published early in fiscal year 1980 (see § 1601.3(a)).

(b) Until management framework plans, existing or in preparation, are superseded by resource management plans, proposed actions may be considered on the basis of these existing management framework plans as follows:

(1) The management framework plan shall be in compliance with the principle of multiple use and sustained yield and shall have been developed with public participation and governmental coordination, but not necessarily precisely as prescribed by §§ 1601.3 and 1601.4 of this title.

(2) Proposed actions which have been or are being discussed in court ordered management framework plan based environmental statements (e.g., range and timber management actions) may be given further consideration 30 days after the filing of the relevant environmental impact statement; and these regulations do not require any subsequent analysis or process.

(3) For proposed actions other than those described in paragraph (b)(2) of this section, determination shall be made by the District Manager whether the proposed action is in conformance with the management framework plan. Such determination shall be in writing and shall explain the reasons for the determination.

(i) If the proposed action is in conformance, it may be further considered for decision under procedure applicable to that type of action, including requirements of regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR 1500–1508.

(ii) If the proposed action is not in conformance with the management framework plan, or if the management framework plan does not meet the requirements of paragraph (b)(1) of this section, and if the proposed action warrants further favorable consideration before a resource management plan is scheduled for preparation, such consideration shall be through a management framework plan amendment using the provisions of § 1601.6–3(b) of this title.

(c) If an action is proposed by an applicant where public lands are not covered by a management framework plan, an environmental analysis and an environmental impact statement, if necessary, plus any other data and analysis necessary to make an informed decision shall be used to assess the impacts of the proposal and to provide a basis for a decision on the proposal.

Guy R. Martin,
Assistant Secretary of the Interior.
August 1, 1979.

[FR Doc. 79–24280 Filed 8–6–79; 8:45 am]

GPO 859 • 704

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[Circular No. 2452]

Application Procedures; Subpart 1821—Execution and Filing of Forms; Place for Filing

Under the authority of section 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740), Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Section 1821.2–1 is amended to read as follows:

§ 1821.2–1 Office hours; place for filing.

* * * * *

(d) * * *

Office and Area of Jurisdiction

Alaska State Office, 701 "C" Street, Box 13, Anchorage, Alaska 99513—Southern Alaska.[1]

Fairbanks District Office, N. Post of Ft. Wainwright, P.O. Box 1150, Fairbanks, Alaska 99707—Northern Alaska.[1]

[1] See diagram for division line.

Arizona State Office, 2400 Valley Bank Center, Phoenix, Arizona 85073—Arizona.

California State Office, Federal Building, 2800 Cottage Way, Sacramento, California 95825—California.

Colorado State Office, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202—Colorado.

Eastern States Office, 350 So. Pickett Street, Alexandria, Virginia 22304—Arkansas, Iowa, Louisiana, Minnesota, Missouri, and all States east of the Mississippi River.

Idaho State Office, Federal Building, 550 West Fort Street, Box 042, Boise, Idaho 83724—Idaho.

Montana State Office, Granite Tower, 222 N. 32nd Street, P.O. Box 30157, Billings, Montana 59107—Montana, North Dakota, and South Dakota.

Nevada State Office, Federal Building, 300 Booth Street, Reno, Nevada 89509—Nevada.

New Mexico State Office, U.S. Post Office and Federal Building, South Federal Place, Santa Fe, New Mexico 87501—New Mexico, Oklahoma, and Texas.

Oregon State Office, 729 Northeast Oregon Street, Portland, Oregon 97208—Oregon and Washington.

Utah State Office, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111—Utah.

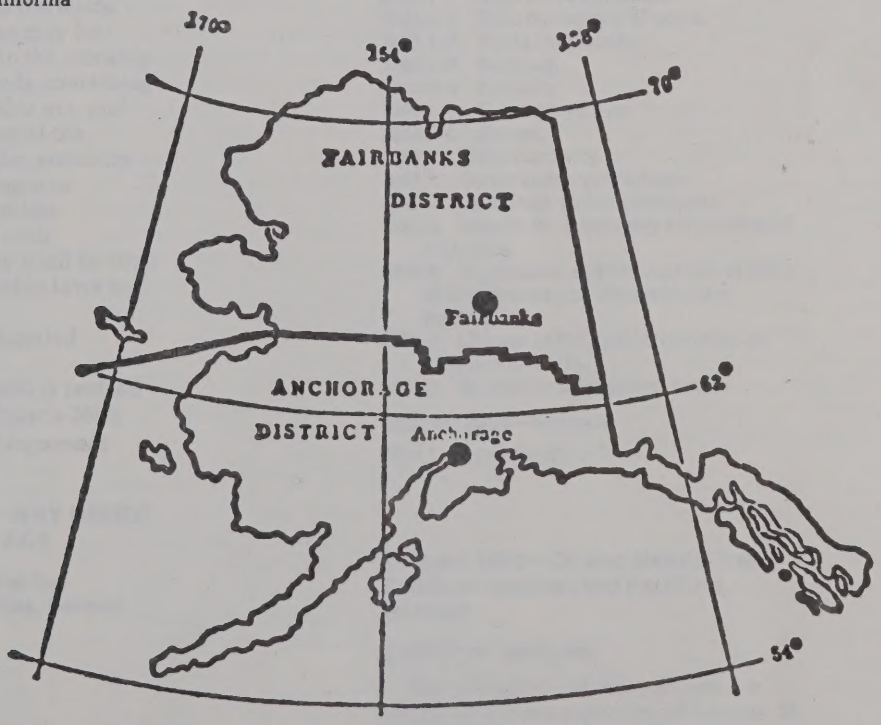
Wyoming State Office, 2515 Warren Avenue, P.O. 1828, Cheyenne, Wyoming 82001—Wyoming, Kansas, and Nebraska.

James Curlin

Acting Assistant Secretary of the Interior.

September 24, 1979.

[FR Doc. 79–30168 Filed 9–27–79; 8:45 am]



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Circular Distribution List

GPO 853 - 334

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

[Circular No. 2453]

Management of Oil and Natural Gas Pipelines and Related Facilities on Federal Lands and Reimbursement of Costs

Under the authority of section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), it is proposed to amend Part 2880, Group 2800, subchapter B, Chapter II, Title 43 of the Code of Federal Regulations as set forth below.

1. Subpart 2882 is redesignated Subpart 2887, and is revised to read as follows:

Subpart 2887—Over Lands Subject to Mineral Lease

§ 2887.0-3 Authority.

Section 29 of the Act of February 25, 1920, as amended (30 U.S.C. 186), provides in part that any permit, lease, occupation or use permitted under that act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through or in the lands leased, occupied or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes. Application for such easements or rights-of-way shall be filed in accordance with applicable laws and regulations.

2. Subpart 2883 is redesignated Subpart 2888.

3. The heading to Part 2880 is revised and the following new Subparts 2880, 2881, 2882, 2883, and 2884 supersede existing Subpart 2881:

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

Subpart 2880—Oil and Natural Gas Pipelines and Related Facilities, General

Sec.

2880.0-3 Authority.
2880.0-5 Definitions.
2880.0-7 Scope.

Subpart 2881—Terms and Conditions of Right-of-Way Grants and Temporary Use Permits

2881.1 Nature of interest.
2881.1-1 Nature of right-of-way interest.
2881.1-2 Nature of temporary use permit interest.
2881.1-3 Reservation of rights to the United States.
2881.2 Terms and conditions of interest granted.
2881.3 Unauthorized occupancy.

Subpart 2882—Applications

2882.1 Pre-application activity.
2882.2 Requirements for applications for right-of-way grants and temporary use permits.
2882.2-1 Applicant qualifications and disclosure.
2882.2-2 Application filing.
2882.2-3 Application content.
2882.2-4 Other data that may be required.
2882.3 Application processing.
2882.4 Interagency agreements.

Subpart 2883—Administration of Rights Granted

2883.1 General requirements.
2883.1-1 Reimbursement of costs.
2883.1-2 Rental payments.
2883.1-3 Bonding.
2883.1-4 Liability.
2883.1-5 Common carrier.
2883.1-6 Export.
2883.2 Holder activity.
2883.3 Construction procedures.
2883.4 Operation and maintenance.
2883.5 Immediate temporary suspension of activities.
2883.6 Suspension and termination of right-of-way grants and temporary use permits.
2883.7 Change in Federal jurisdiction or disposal of lands.
2883.8 Restoration of Federal lands.

Subpart 2884—Appeals

2884.1 Appeals procedure.

* * * * *

Subpart 2880—Oil and Natural Gas Pipelines and Related Facilities, General

§ 2880.0-3 Authority.

The provisions of this subpart are issued under the authority of Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), unless otherwise noted.

Published in 44 F.R. 58126, October 9, 1979 - Effective November 8, 1979

Circular Distribution List

§ 2880.0-5 Definitions.

As used in this part, the term:

(a) "Act" means Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

(b) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, who has jurisdiction over the surface of Federal lands.

(c) "Applicant" means any individual, partnership, corporation, association, or other business entity, or any State or local governmental entity or agency, which applies for a right-of-way grant or temporary use permit under the Act.

(d) "Authorized officer" means any employee of the department of the Interior to whom has been delegated the authority to perform the duties described in this part.

(e) "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf.

(f) "Holder" means any individual, partnership, corporation, association, or other business entity, or any State or local governmental entity or agency which has received a right-of-way grant or temporary use permit under the Act.

(g) "Oil or gas" means oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

(h) "Temporary use permit" means a revocable nonpossessory privilege to use specified Federal lands in the vicinity of a right-of-way in connection with the construction, operation, maintenance, or termination of a pipeline or for the protection of the natural environment or public safety.

(i) "Pipeline" means a line of pipe traversing Federal lands for transportation of oil or gas. The term includes trunk lines, gathering lines and related facilities.

(j) "Pipeline system" means all facilities, whether or not located on Federal lands, used by a holder in connection with the construction, operation, maintenance, or termination of a pipeline.

(k) "Related facilities" means those structures, devices, improvements, and sites, the substantially continuous use of which is necessary for the operation or maintenance of a pipline, which are located on Federal lands, and which are authorized under the Act, including but not limited to: Supporting structures; airstrips; roads; campsites; water or gas injection lines; pump stations, including associated heliports, structures, yards, and fences; valves, and other control devices; surge and storage tanks; bridges; monitoring and communication devices and structures housing them; terminals, including structures, yards, docks, fences, and storage tank facilities; retaining walls, berms, dikes, ditches, cuts, and fills; structures and areas for storing supplies and equipment. Related facilities may be connected or nonconnected or contiguous or noncontiguous to the pipe.

(l) "Right-of-way" means the Federal land authorized to be occupied pursuant to a right-of-way grant.

(m) "Right-of-way grant" means a document authorizing a nonpossessory, nonexclusive right to use Federal lands for the limited purpose of construction, operation, maintenance, and termination of a pipeline.

(n) "Secretary" means the Secretary of the Interior.

§ 2880.0-7 Scope.

(a) These regulations apply to any application now on file or hereafter filed with Federal agencies for issuance, modification, or renewal of a right-of-way grant or a temporary use permit, except where the surface of the Federal lands involved in the right-of-way or temporary use permit area is under the jurisdiction of a single Federal agency, including bureaus and agencies within the Department of the Interior, other than the Bureau of Land Management.

(b) In addition, the provisions of § 2883.5 of this title apply to all right-of-way grants and temporary use permits heretofore issued pursuant to section 28 of the Mineral Leasing Act by the Bureau of Land Management, and to permits, grants, and other authorizations heretofore issued by the Secretary or his delegate in connection with the Trans-Alaska Oil Pipeline System (TAPS).

(c) The regulations of this part do not apply to the reservation of rights-of-way for Federal departments or agencies. Such rights-of-way shall be reserved in accordance with the regulations in Subpart 2800 of this title.

Subpart 2881—Terms and Conditions of Right-of-Way Grants and Temporary Use Permits

§ 2881.1 Nature of interest.

§ 2881.1-1 Nature of right-of-way interest.

(a) The United States retains a right to use a right-of-way and temporary use permit area or authorize the use of it to others in any manner not inconsistent with pipeline construction, operation, maintenance, and termination. The holder of a right-of-way grant or temporary use permit has no right to any of the products of the land including, but not limited to, timber, forage, mineral, and animal resources. The holder may not allow the use of a right-of-way or temporary use permit area by others except its contractors, subcontractors, employees, agents or servants for purposes of construction, operation, maintenance, or termination of the pipeline.

(b) A holder shall not use a right-of-way and temporary use permit area for any purpose other than for the construction, operation, maintenance, and termination of the pipeline specified in the holders right-of-way grant. A holder shall not locate or construct any other pipelines, including looping lines, or other improvements within a right-of-way without first securing appropriate authorization therefor.

(c) The width of a right-of-way shall not exceed 50 feet plus the ground occupied by the pipeline (that is, the pipe and related facilities) unless the authorized officer finds and records the reasons for his finding, that a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety.

(d) An applicant may apply to the authorized officer for a wider right-of-way in limited areas, if necessary: (1) for the operation and maintenance of the project after construction; (2) to protect the environment; or (3) to provide for the public safety. If the authorized officer finds that the additional width is necessary for one of the above reasons, he may authorize a wider width. Such authorization shall include a written report recording the reasons why the additional width is necessary.

(e) A right-of-way grant issued or renewed under these regulations shall be limited to a reasonable term, not to exceed 30 years. No term shall be longer than is necessary to accomplish the purpose of the grant. The authorized officer shall determine the duration of each right-of-way grant, taking into consideration, among other things: (1) The cost of the facility, (2) its useful life, (3) any public purpose it serves, and (4) potentially conflicting uses of the land.

(f) Except where a right-of-way grant has terminated by its terms upon the occurrence of a fixed or agreed upon condition, event, or time, it shall be renewed if the pipeline is being operated and maintained in accordance with all provisions of the right-of-way grant, these regulations and the Act. The authorized officer may modify the terms and conditions of the right-of-way grant at the time of renewal.

(g) No purported transfer of an interest in a right-of-way grant, a right-of-way, or any portion of a pipeline system located within a right-of-way, shall be valid without the prior written

approval of the authorized officer. Applications for such approval shall be directed to the authorized officer. A transferee shall meet all the requirements of an original pipeline right-of-way grantee is bound by and shall assume all of the transferor's responsibility to the United States with respect to the transferred interest and shall agree to be bound by all terms of any outstanding right-of-way grant or temporary use permit. Applications for a transfer of interest shall be accompanied by a nonrefundable fee of $50.

§ 2881.1–2 Nature of temporary use permit interest.

(a) A temporary use permit does not grant any interest in land and is revocable at will by the authorized officer.

(b) The area covered by a temporary use permit shall be no greater than is necessary to accommodate the authorized use or to protect the environment or provide for public safety.

(c) The duration of a temporary use permit shall be determined by the authorized officer in a manner that is consistent with construction activities, and is not to exceed that length of time needed to accomplish the purpose for which the permit is sought. The term of a temporary use permit shall not exceed 3 years subject to the provisions of § 2881.1–2 of this title.

(d) A temporary use permit may be renewed at the discretion of the authorized officer, but the permittee has no right of renewal. The authorized officer may modify the terms and conditions of the temporary use permit at the time of renewal.

(e) A temporary use permit may be assigned at the discretion of the authorized officer, provided the use for which the permit was issued continues.

§ 2881.1–3 Reservation of rights to the United States.

All rights in Federal lands subject to a right-of-way grant or temporary use permit not expressly granted are retained by the United States. These rights include, but are not limited to: (a) A continuing right of access across right-of-way and temporary use permit areas to all Federal lands (including the subsurface and air space); (b) a continuing right of physical entry to any part of the pipeline system for inspection, monitoring, or for any other purpose or reason consistent with any right or obligation of the United States under any law or regulation; and (c) the right to make, issue, or grant right-of-way grants, temporary use permits, easements, leases, licenses, contracts, patents, permits and other authorizations to or with third parties for compatible uses on, under, above, or adjacent to the Federal lands subject to a right-of-way grant or temporary use permit.

§ 2881.2 Terms and conditions of interest granted.

(a) An applicant, by accepting a right-of-way grant or a temporary use permit, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(1) To the extent practicable, all State and Federal laws applicable to the pipeline system construction, operation and maintenance which is authorized and all such additional State and Federal law, along with the implementing regulations, that may be enacted and issued during the term of the grant or permit;

(2) That the pipeline and related facilities be subject to the express covenant that they will be modified, adapted or discontinued within the provisions of the Act and without liability to the United States, if found by the Secretary that the use of the land for pipeline and related facility purposes conflicts with any future proposed use or occupancy of the land when it is determined that the proposal will better serve the national interest;

(3) That in the construction, operation and maintenance of the pipeline and related facilities, there shall be no discrimination against any employee or applicant for employment because of race, creed, color, sex or national origin and all subcontracts shall include an identical provision;

(4) To build and repair roads, fences and trails that may be destroyed or damaged by construction, operation or maintenance of the pipeline and related facilities and to build and maintain suitable crossings for roads and trails that intersect the right-of-way and related facilities; and

(5) To do everything reasonably within his or her power, both independently and upon request of the authorized officer, to prevent and suppress fires on or near the right-of-way and related facilities. This includes making available such construction and maintenance forces as may be reasonably obtained for the suppression of fires.

(b) All right-of-way grants and temporary use permits issued, renewed, or amended under these regulations shall contain such terms, conditions, and stipulations as may be prescribed by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination. The authorized officer shall impose stipulations which shall include, but shall not be limited to: (1) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (2) requirements to insure that activities in connection with the right-of-way grant or temporary use permit shall not violate applicable air and water quality standards or related facility siting standards established by or pursuant to applicable Federal and State law; (3) requirements designed to control or prevent damage to the environment (including damage to fish and wildlife habitat), damage to public or private property, and hazards to public health and safety; and (4) requirements to protect the interests of individuals living in the general vicinity of the right-of-way or temporary use permit area who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(c) Right-of-way grants or temporary use permits issued, renewed, or amended under this title shall include requirements which comply with applicable Federal and State law that will protect the safety and health of pipeline workers and the general public, including, but not limited to, protection against the sudden rupture and slow degradation of the pipeline. Applicants and holders shall design, construct, operate, and maintain all facilities in accordance with applicable Federal and State law governing pipelines and pipeline construction.

§ 2881.3 Unauthorized occupancy.

No holder of a right-of-way grant or temporary use permit shall use or knowingly allow any other person to use the right-of-way or temporary use permit area for any purpose not authorized by the right-of-way grant or temporary use permit. Any person occupying or using Federal lands without authorization may be subject to prosecution under applicable law.

Subpart 2882—Applications

§ 2882.1 Pre-application activity.

(a) Upon determining that a proposed pipeline project is contemplated which would cross Federal lands under the jurisdiction of the Department of the Interior, or 2 or more Federal agencies, the proponent of such project is encouraged to promptly notify the appropriate office identified in § 2882.2–2 of this title or the Secretary.

(b) The authorized officer shall provide guidance to the pipeline project proponent as to: (1) routing constraints which exist because of current land status as reflected in land use plans and land status records; (2) necessary information to be included in applications for right-of-way grants or temporary use permits; (3) qualifications required of applicants; and (4) identification of on-the-ground investigations which will require temporary use permits.

(c) No work of any kind in connection with a right-of-way proposal, other than that incurred in the processing of temporary use permits under paragraph (d) of this section shall be undertaken by the authorized officer prior to the filing of an acceptable application together with advance payment as required by § 2802.1–2 of this title. The work that shall not be done includes, but is not limited to, special studies such as environmental analyses, environmental impact statements, engineering surveys, resource inventories, and detailed land record analyses.

(d) No activities, other than casual use, such as, but not limited to, vehicle use on existing roads, sampling, marking of routes, searching, or other similar activities that do not disturb the surface of the lands or require the removal of vegetation, shall be conducted on Federal lands prior to the issuance of a right-of-way grant or a temporary use permit.

§ 2882.2 Requirements for applications for right-of-way grants and temporary use permits.

§ 2882.2–1 Applicant qualifications.

(a) An applicant for a right-of-way grant or temporary use permit shall be a citizen of the United States, an association of such citizens, a corporation organized under the laws of the United States, or of any State thereof, or a State or local government. Aliens may not acquire or hold any direct or indirect interest in rights-of-way, right-of-way grants or temporary use permits, except that they may own or control stock in corporations holding rights-of-way, right-of-way grants or temporary use permits if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to the United States citizens, its application shall be denied. A right-of-way shall not be granted to a minor, but a right-of-way may be granted to legal guardians or trustees of minors in their behalf.

(b) An application by a private corporation shall be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official where the corporation was organized and a copy of its bylaws, duly certified by the secretary of the corporation.

(c) A corporation, other than a private corporation, shall file a copy of the law under which it was formed and provide a proof of organization under the same, and a copy of its bylaws, duly certified by the secretary of the corporation.

(d) When a corporation is doing business in a State other than that in which it in incorporated, it shall submit a certificate from the Secretary of State or other proper official of that State indicating that it has complied with the laws of the State governing foreign corporations to the extent required to entitle the company to operate in such State, and that the corporation is in good standing under the laws of that State.

(e) A copy of the resolution by the directors of the corporation or other documents authorizing the filing of the application shall also be filed.

(f) If the corporation has previously filed with the Department the papers required by this subsection, the requirements shall be held to be met if, in making subsequent applications, specific references are made to such previous filing by date, place, and case number, and if there have not been any amendments or revisions of the corporation's charter, articles of incorporation, or bylaws.

(g) If the applicant is a partnership, association, or other unincorporated entity, the application shall be accompanied by a certified copy of the articles of association or other similar document creating the entity, if any. The application shall be signed by each partner or member of the entity, and each shall furnish the evidence of qualification which would be required if the partner or member were applying separately.

(h) If the applicant is a State or local government, or agency or instrumentality thereof, the application shall be accompanied by a statement to the effect and a copy of the law, resolution, order, or other authorization under which the application is made.

(i) Each application by a partnership, corporation, association, or other business entity shall disclose the identity of the participants in the entity and shall include where applicable: (1) The name, address, and citizenship of each participant (partner, associate or other); (2) where the applicant is a corporation, the name, address, and citizenship of each shareholder owning 3-percent or more of each class of shares, together with the number and percentage of any class of voting shares of the entity which each shareholder is authorized to vote; and (3) the name and address of each affiliate controlled by, or that controls, the entity, either directly or indirectly. Where an affiliate is controlled by the entity, the application shall disclose the number of shares and the percentage of each class of voting stock of that affiliate owned, directly or indirectly, by the entity. If an affiliate controls the entity, the number of shares and the percentage of each class of voting stock of the entity owned, directly or indirectly, by the affiliate shall be included. In the case of an affiliate that directly or indirectly controls the entity, the application shall include the name and address of each participant (partner, associate, or other) in the affiliate or, if the affiliate is a corporation, the name, address and citizenship of each shareholder owning 3 percent or more of all shares together with the number and percentage of each class of voting shares of the entity which each shareholder is entitled to vote.

(j) Applications filed with Federal agencies, such as the Federal Energy Regulatory Commission, to obtain a license, certificate or other authority for a project involving a right-of-way over, upon, under or through Federal lands for an oil and gas pipeline shall be simultaneously filed with the Bureau of Land Management in accordance with the provisions of § 2882.2–3 of this title.

(k) The application shall include facts and attached supporting documents which demonstrate the applicant has the technical and financial capability to construct, operate, maintain and terminate the pipeline for which the right-of-way grant or temporary use permit is requested.

(l) If there are any related right-of-way grant or temporary use permit applications pending, or if the applicant's plans include applications for additional pipeline right-of-way grants or temporary use permits, the application for a right-of-way grant or temporary use permit shall so indicate and refer to any previous applications.

§ 2882.2–2 Application filing.

(a) Where the Federal lands involved are under the jurisdiction of the Bureau of Land Management, Department of the Interior, application for a right-of-way grant or temporary use permit or renewal of either shall be filed with any State Office of the Bureau of Land Management that has jurisdiction over the Federal lands involved.

(b) Where the Federal lands involved are under the jurisdiction of two or more agencies of the Department of the Interior, or where the Federal lands involved are under the jurisdiction of one or more agencies of the Department of the Interior and one or more other Federal agencies, or where the Federal lands involved are under the jurisdiction of two or more non-Interior agencies, the initial application for a right-of-way grant or temporary use permit may be filed at the most convenient State Office of the Bureau of Land Management, at locations listed in § 1821.2–1 of this title. The Director, Bureau of Land Management will, upon notice of the application by field officials, assign a lead official and notify the applicant where all future communications concerning the project should be directed. All applications for temporary use permits that are filed subsequent to the filing of an application for a right-of-way grant shall be filed with the lead official. Applications for renewal of a right-of-way grant or temporary use permit shall be filed with the lead official.

(c) Where the Federal lands involved are under the jurisdiction of but one Federal agency, including bureaus and agencies within the Department of the Interior other than the Bureau of Land Management, applications for a right-of-way grant or temporary use permit or renewal of either shall be directed to that agency.

§ 2882.2–3 Application content.

(a) Applications for right-of-way grants and temporary use permits shall be filed in a format approved by the Director or appropriate agency head, shall be legible, and shall include the information required by § 2882.22–1 of this title and other information as follows:

(1) The name and legal mailing address of the applicant and, if the applicant is not an individual, the name and legal mailing address of the applicant's agent who is authorized to receive notice of actions pertaining to the application.

(2) A description of the proposed pipeline system, including elements of the project which may be constructed on non-Federal lands. The description shall be in sufficient detail to enable the authorized officer to determine the feasibility of the pipeline, the benefits to the public from the proposed pipeline, the pipeline safeguards, the environmental impacts and whether the proposal complies with these regulations and the Act.

(3) A description of all Federal lands which would be involved in the pipeline system, with a statement identifying the Federal agencies concerned.

§ 2882.2–4 Other data that may be required.

(a) The authorized officer may require additional information necessary to prepare environmental assessments and/or other documents he may require relating to the construction, operation, maintenance, and termination phases of the proposed pipeline system, including, but not limited to:

(1) The effect on soils and mineral resources;

(2) The effect on air quality;

(3) The effect on water quality;

(4) Damages to or changes in vegetation;

(5) Changes in fish and wildlife habitat;

(6) The risk of hazards to public health and safety;

(7) The effect of the proposed pipeline on individuals living in its general vicinity who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes;

(8) The impacts on archeological, paleontological and historical resources;

(9) The impacts on visual resources;

(10) Alternative pipeline route locations.

(b) If the proposed right-of-way or temporary use permit area is within a Federal reservation, the applicant shall submit additional data as required by the authorized officer to assist the Secretary in determining whether the right-of-way grant or temporary use permit would be inconsistent with the purposes of the reservation.

(c) The authorized officer shall require plans for construction, operation, maintenance and termination of the pipeline system. The plans may include, but not be limited to the following data:

(1) Plans and schedules for construction of all pipeline facilities and estimated construction costs.

(2) Plans for the protection of the environment during construction, operation, maintenance and termination of the pipeline.

(3) Plans for emergency repair of any rupture during operation, containment of effluent and restoration of damage.

(d) The authorized officer shall require the submission of a map of the pipeline either with an application, prior to issuance of a right-of-way grant or within 60 days after completion of construction. An application may be processed before a map is submitted.

(e) The authorized officer shall require the submission of a map of the area to be used with an application for a temporary use permit. The authorized officer may impose the map standards set out in § 2882.3–3 of this title for temporary use permits when it is determined to be necessary by the authorized officer.

(f) Maps portraying linear rights-of-way shall, as a minimum, show the following data:

(1) The bearing and distance of the traverse line or the true centerline of the constructed facility.

(2) At least one tie to a public land survey monument, either at the beginning or ending point of the pipeline or related facility on Federal lands. If a public land survey monument is not within a reasonable distance, as determined by the authorized officer, either a relatively permanent man-made structure or monument or a prominent natural feature shall be used.

(3) A tie as provided in paragraph (f)(2) of this section shall occur for each entry upon or exit from Federal lands unless the map shows a continuous location of the pipeline or related facility from the initial entry upon or the final exit from Federal lands.

(4) The exterior limits of the right-of-way or temporary use permit area referenced in distance from the centerline of the pipeline or related facility.

(5) All 40 acre subdivisions or larger areas of each section within which the right-of-way or temporary use area occurs shall be listed by section, township and range.

(6) The scale of the map shall be shown along with a north arrow. The map scale shall be such that all of the required information is legible.

(g) A map portraying non-linear or site-type rights-of-way or temporary use areas shall include, at a minimum, the requirements of paragraph (f)(6) of this section and the following unless waived by the authorized officer:

(1) The bearing and distance of each exterior side of the site.

(2) At least one angle point of the location shall be tied to a public land survey monument as provided in paragraph (f)(2) of this section.

§ 2882.3 Application processing.

(a) The Secretary shall notify the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources promptly upon receipt of an application for a right-of-way grant for a pipeline 24 inches or more in diameter and no right-of-way grant for such a pipeline shall be issued until 60 days (not counting days on which the House of Representatives or the Senate has adjourned for more than 3 days) after a notice of intention to issue the right-of-way grant, together with the authorized

officer's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(b) Upon receipt of an application for a right-of-way grant, the authorized officer shall publish a notice of the application in the **Federal Register** and an announcement in a newspaper or newpapers having general circulation in the vicinity of the Federal lands affected, or, if in the opinion of the authorized officer, the pipeline impacts are of a minor nature, the notice of application may be waived or published only in a newspaper having general circulation in the area or areas in the vicinity of the affected Federal lands. The notice shall contain a description of the pipeline systems as required in §§ 2882.2–3(a) (2) and (3) of this title, together with such other information as the authorized officer considers pertinent. The notice shall state where the application and related documents are available for interested persons to review. Copies of the notice shall be sent to the Governor of each State within which the pipeline system may be located, the head of each local government or jurisdiction within which the pipeline system may be located, and each agency head, for review and comment.

(c) Where an application for a right-of-way grant or temporary use permit is incomplete or not in conformity with the Act or these regulations, the authorized officer may reject the application or notify the applicant of the deficiencies and afford the applicant an opportunity to file corrections. Where deficiency notices have not been adequately complied with, the authorized officer may reject the application or notify the applicant of the continuing deficiencies and afford the applicant an opportunity to file corrections.

(d) The authorized officer may require the applicant for a right-of-way grant or temporary use permit to submit such additional information as he deems necessary for review of the application.

(e) An application for a right-of-way grant or temporary use permit which meets the requirements of the Act and of these regulations entitles the applicant only to full review of the application. Such application may be denied if the authorized officer determines that the right-of-way or use applied for would be inconsistent with the purpose to which the Federal lands involved have been committed, or would otherwise not be in the public interest.

(f) The authorized officer shall hold public meetings or hearings on an application for a right-of-way grant or temporary use permit if he determines that such hearings or meetings are appropriate and sufficient public interest exists to warrant the time and expense of such meetings or hearings Notice of any such meetings or hearings shall be published in the **Federal Register** and in local newspapers.

(g) If the application involves a right-of-way through Federal lands under the jurisdiction of two or more Federal agencies, the authorized officer shall refer the application to the agency heads for consultation and other appropriate actions.

(h) The authorized officer shall consult with other agencies as to any additional information which should be required from the applicant, conditions or stipulations which should be imposed, and whether the right-of-way grant or temporary use permit should be issued.

(i) No right-of-way grant or temporary use permit over Federal lands under the jurisdiction of two or more Federal agencies and not within the jurisdiction of the agency by which the authorized officer is employed shall be issued or renewed by the authorized officer without the concurrence of the head of the agency administering such Federal lands or his authorized representative.

(j) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary may, after consultation with the non-Interior agencies involved, grant or renew a right-of-way or temporary use permit through the Federal lands involved, with or without the concurrence of the heads of the agencies administering such Federal lands. A right-of-way through a Federal reservation shall not be granted if the Secretary determines that it would be inconsistent with the purposes of the reservation.

(k) A right-of-way grant or temporary use permit need not conform to the applicant's proposal, but may contain such modifications, terms, stipulations or conditions including changes in route or site location as the authorized officer considers appropriate.

(l) No right-of-way grant or temporary use permit shall be considered as being in effect until the applicant has accepted its terms, in writing. Written acceptance shall constitute an agreement between an applicant and the United States that, in consideration of the right to use Federal lands, the applicant shall abide by all terms and conditions contained therein and the provisions of applicable laws and regulations.

(m) At the discretion of the authorized officer, a provision may be placed in a right-of-way grant or temporary use permit requiring that no construction or use shall occur until detailed construction or use plans have been submitted to the authorized officer and a notice to proceed has been issued. This requirement may apply to the entire pipeline or segments thereof.

§ 2882.4 Interagency agreements.

The authorized officer may enter into interagency cooperative agreements with the other Federal agencies having jurisdiction over the Federal lands involved in right-of-way grants or temporary use permits applied for and issued under this part.

Subpart 2883—Administration of Rights Granted

§ 2883.1 General requirements.

§ 2883.1–1 Reimbursement of costs.

Reimbursement of costs for application processing and administration of right-of-way grants and temporary use permits shall be made in accordance with § 2802.1–2 of this title.

§ 2883.1–2 Rental payments.

Except as provided in § 2802.1–7(b) of this title, holders of right-of-way grants and temporary use permits shall pay annually, in advance the fair market rental value of the right-of-way or temporary use permit area as determined by the authorized officer.

§ 2883.1–3 Bonding.

The authorized officer may require a holder of a right-of-way grant or temporary use permit to furnish a bond, or other security satisfactory to him, to secure all or any of the obligations imposed by the right-of-way grant and temporary use permits and applicable laws and regulations.

§ 2883.1–4 Liability.

(a) Except as provided in paragraph (f) of this section holders shall be fully liable to the United States for any damage or injury incurred by the United States in connection with the use and occupancy of the right-of-way or permit area.

(b) Except as provided in paragraph (f) of this section, holders shall be held to a standard of strict liability for any activity within a right-of-way or permit area which the authorized officer determines, in his discretion, presents a foreseeable hazard or risk of damage or injury to the United States. The activities and facilities to which such standard shall apply shall be specified in the right-of-way grant or temporary use permit. Strict liability shall not be imposed for damage or injury resulting

primarily from an act of war or the negligence of the United States. To the extent consistent with other laws, strict liability shall extend to costs incurred by the United States for control and abatement of conditions, such as fire or oil spills, which threaten lives, property or the environment, regardless of whether the threat occurs on areas that are under Federal jurisdiction. Stipulations in right-of-way grants and temporary use permits imposing strict liability shall specify a maximum limitation on damages which, in the judgment of the authorized officer, is commensurate with the foreseeable risks or hazards presented. The maximum limitation shall not exceed $1,000,000 for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred.

(c) In any case where strict liability is imposed and the damage or injury was caused by a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction in which the damage or injury occurred.

(d) Except as provided in paragraph (f) of this section, holders shall be fully liable for injuries or damages to third parties resulting from activities or facilities on lands under Federal jurisdiction, in accordance with the law of the jurisdiction in which the damage or injury occurred.

(e) Except as provided in paragraph (f) of this section, holders shall fully indemnify or hold harmless the United States for liability, damage or claims arising in connection with the use and occupancy of right-of-way or permit areas.

(f) If a holder is a State or local government, or agency or instrumentality thereof, it shall be liable to the fullest extent its laws allow at the time it is granted a right-of-way grant or temporary use permit. To the extent such a holder does not have the power to assume liability, it shall be required to repair damage or make restitution to the fullest extent of its powers at the time of any damage or injury.

(g) All owners of any interest in, and all affiliates or subsidiaries of any holder of a right-of-way grant or temporary use permit, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim cannot be satisfied by a holder.

(h) Except as otherwise expressly provided in this section, the provisions in this section for a remedy is not intended to limit or exclude any other remedy.

(i) If the right-of-way grant or temporary use permit is issued to more than one holder, they shall be jointly and severally liable under this section.

§ 2883.1-5 Common carriers.

(a) Pipelines shall be constructed, operated, and maintained as common carriers. The owners or operators of pipelines shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands. In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased.

(b) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality. Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(c) The authorized officer shall require, prior to issuing or renewing a right-of-way grant, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which the authorized officer considers necessary to determine whether a right-of-way grant shall be issued or renewed and the terms and conditions which should be included in the grant. Such information may include, but is not limited to:

(1) Conditions for, and agreements among, owners or operators regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;

(2) Conditions for adding or abandoning intake, offtake, or storage points or facilities; and

(3) Minimum shipment or purchase tenders.

§ 2883.1-6 Export.

With certain exceptions, domestically produced crude oil transported through a pipeline is subject to the provisions of Section 28(u) of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 185), and the Export Administration Act of 1969 as amended (50 U.S.C. 2401), and may not be exported without Presidential and congressional approval.

§ 2883.2 Holder activity.

(a) The actions of holders of right-of-way grants or temporary use permits shall be regulated by the appropriate agency head having jurisdiction over the Federal lands involved, unless other arrangements are agreed to by the authorized officer and agency head.

(b) An applicant shall promptly notify the authorized officer of any changes in its plans, financial condition, or other factors relevant to the application, and shall modify the application promptly to reflect any such changes. If the requirements of this subsection are not complied with in the opinion of the authorized officer, the application may be rejected.

(c) The holder shall at all times keep the authorized officer informed of his or her address, and in the case of a corporation, of the address of its principle place of business and the names and addresses of its principle officers.

(d) Any proposed change in the route of the pipeline or change in the use of Federal lands under the Act will require an amended or new right-of-way grant or temporary use permit from the authorized officer. Any unauthorized activity may be subject to prosecution under applicable laws.

(e) Holders of pipeline right-of-way grants issued before November 16, 1973, must apply under the Act and these regulations for modifications of the route or change in the use of Federal lands in connection with such right-of-way.

(f) The authorized officer may ratify or confirm a right-of-way grant or temporary use permit that was issued under any provision of law if the right-of-way grant or temporary use permit is modified to comply with the provisions of the Act and regulations. Such modifications are subject to the joint approval of the right-of-way holder and the authorized officer.

§ 2883.3 Construction procedures.

(a) Unless otherwise stated in the right-of-way grant or temporary use permit, construction may proceed immediately after delivery to the authorized officer of the applicant's written acceptance of the right-of-way grant or temporary use permit.

(b) If a notice to proceed requirement has been imposed under § 2882.3(m) of

this title, the holder shall initiate no construction, occupancy, or use until the authorized officer issues an appropriate notice to proceed.

§ 2883.4 Operation and maintenance.

Prior to the beginning of pipeline operations, the holder shall submit to the authorized officer a certification of construction, verifying that the pipeline system has been constructed and tested in accordance with the terms of the right-of-way grant, and in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.

§ 2883.5 Immediate temporary suspension of activities.

(a) If the authorized officer determines that any activity being conducted or authorized by a holder within a right-of-way or temporary use permit area is endangering public health or safety or the environment, he may order the immediate suspension of that activity and immediate remedial action.

(b) The authorized officer may order immediate suspension of an activity irrespective of any action that has been or is being taken by another Federal agency or a State agency.

(c) The authorized officer may give an immediate suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee, or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent.

(d) An order of temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(e) Any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(f) The authorized officer may render an order to either grant or deny the request to resume 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal the denial as if an order denying the request had been issued.

§ 2883.6 Suspension and termination of right-of-way grants and temporary use permits.

If the right-of-way grant or temporary use permit provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon condition or event, the right-of-way grant or temporary use permit shall thereupon automatically terminate by operation of law, unless some other procedure is specified in the right-of-way grant or temporary use permit.

§ 2883.6–1 Suspension and termination of right-of-way grants.

(a) The authorized officer may institute procedures for suspension or termination of a right-of-way grant if it is determined that:

(1) The holder is unwilling, unable or has failed to comply with any term, condition, or stipulation of the right-of-way grant or applicable laws or regulations.

(b) The holder has deliberately failed to use the right-of-way for the purpose for which it was granted or renewed for a continuous 2-year period.

(c) Where the authorized officer determines that a situation under § 2883.6 or § 2883.6–1 of this title exists in connection with a right-of-way grant, he or she shall give written notice to the holder, and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR Part 4. The authorized officer shall suspend or terminate the right-of-way grant if the Administrative Law Judge determines that grounds for suspension or termination exists and that such action is justified.

§ 2883.6–2 Suspension and termination of temporary permits.

(a) The authorized officer may institute procedures for suspension or termination of a temporary use permit if it is determined that:

(1) The holder has failed to comply with any term, condition or stipulation of the permit or applicable laws or regulations; or

(2) The holder has deliberately failed to use the temporary use permit area for the purpose for which it was issued or renewed;

(b) Where the authorized officer determines that a situation under § 2883.6 or § 2883.6–2 of this title exists, he or she shall give written notice to the holder. The holder may file a written request for review of the notice to the next higher level of authority. The reviewing official shall, within 10 days of or receipt of such a request, arrange for a review of the activities that prompted the suspension or termination notice. The reviewing official shall, within a reasonable time, affirm, modify or cancel the notice and shall provide the holder with a written determination.

(c) A holder may appeal a decision issued under paragraph (b) of this section pursuant to 43 CFR Part 4.

§ 2883.7 Change in Federal jurisdiction or disposal of lands.

(a) Where a right-of-way administered under these regulations traverses Federal lands that are transferred from one Federal Agency to another, the transfer shall not operate to terminate or modify the right-of-way or the right-of-way grant, unless otherwise provided by law. The Secretary shall continue to administer the right-of-way and the right-of-way grant, including renewals thereof, and collection of rentals and other payments, unless the transfer instrument provides otherwise. Temporary use permits shall likewise continue under the Secretary's administration, except where otherwise provided by law or by the instrument of transfer.

(b) Where a right-of-way administered under these regulations traverses Federal lands that are transferred out of Federal ownership, the transfer shall not operate to terminate or modify the right-of-way grant and temporary use permit(s) unless otherwise provided by law. The new owner of the lands shall take title thereto subject to the right-of-way grant and temporary use permit(s). Unless otherwise provided by law or by the instrument of transfer, the Secretary shall continue to administer the right-of-way and the right-of-way grant and temporary use permit(s) including renewals thereof and collection of rentals and other payments. Temporary use permits are not renewable after such a transfer.

§ 2883.8 Restoration of Federal lands.

(a) Upon termination of a right-of-way grant or temporary use permit and in the absence of any agreement to the contrary, if all moneys due the Federal Government thereunder have been paid, the holder of the right-of-way grant or temporary use permit may be required to remove the improvements from the right-of-way or temporary use permit area. The holder shall be allowed 6 months or such additional time as may be granted in which to remove from the right-of-way or temporary use permit area all property or improvements of any kind placed thereon; but if not removed within the time allowed, all such property and improvements may be removed and disposed of by sale or otherwise by the authorized officer at

the holder's sole expense. The holder of the right-of-way grant or temporary use permit shall be liable for all costs incurred by the United States to dismantle and/or remove the property and improvements from Federal lands and to restore the Federal lands to a condition acceptable to the authorized officer.

(b) Upon termination of a right-of-way grant or temporary use permit by expiration or by cancellation, the holder shall restore the Federal lands to a condition satisfactory to the authorized officer. The bond or other security shall not be released by the authorized officer until he determines that there has been satisfactory compliance with this obligation.

Subpart 2884—Appeals

§ 2884.1 Appeals procedure.

(a) All appeals under this part from any final decision of the authorized officer shall be taken in accordance with Part 4 of 43 CFR to the Office of the Secretary, Board of Land Appeals.

(b) All actions taken under this part shall remain effective pending any appeal taken unless the Secretary rules otherwise, and the provisons of 43 CFR 4.21(a) shall not apply to such appeals.

§ 2802.1-2 [Amended]

4. Section 2802.1–2(a)(11) and (12) of Subpart 2802 of this title are hereby deleted.

Cecil D. Andrus,
Secretary of the Interior.
October 2, 1979.

[FR Doc. 79–31142 Filed 10–5–79; 8:45 am]

GPO 853 - 332

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[Circular No. 2454]

Wild Free-Roaming Horse and Burro Protection, Management and Control

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking will amend the regulations relating to wild free-roaming horses and burros on the public lands. It implements the Wild Free-Roaming Horse and Burro Act as amended by the Public Rangelands Improvement Act of 1978. The amended rules will improve the protection, management and control of wild free-roaming horses and burros on the public lands.

DATE: Effective January 28, 1980.

ADDRESS: Any suggestions or inquiries should be addressed to: Director (440), Bureau of Land Management, 18th & C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Robert J. Springer, (202) 343–4773.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is Robert J. Springer of the Division of Wild Horses and Burros, Bureau of Land Management, Washington, D.C., assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

Proposed rulemaking was published on pages 20724–20727 in the **Federal Register** of April 6, 1979, and invited comments for 60 days ending June 5, 1979. Comments were received from 34 sources including individuals, State governments, businesses, environmentalists, Federal agencies, humane societies and recreationists. These comments have been reviewed and analyzed. The following summarizes the comments, suggestions and actions taken.

Definitions

One comment suggested that the regulations include a timetable to preserve and maintain the ecological balance identified in the "excess animals" definition. The current inventories and resource management plans required by section 4730.1 will provide the timeliness and flexibility necessary to protect the environment from excess animals.

There were a few comments that felt it was unacceptable to use a wild free-roaming horse or burro for any kind of commercial gain. It would seem that the use of wild free-roaming horses or burros for commercial purposes that do not exploit their characteristic wildness is an acceptable alternative to the distasteful possibility of having to destroy the animals.

There were numerous requests to define the words "old", "sick" and "lame." Consequently, definitions of the three words have been added to these regulations and should help alleviate some of the concerns expressed about the fate of these animals.

It was suggested that the definition of "inhumane practices" be revised by using an expression such as "not using humane practices or procedures." Using the positive term—humane—to describe the negative term—inhumane—is not considered an acceptable method of definition.

It was suggested that there be a definition for a "qualified applicant." The term has not been defined because the qualifications are set out in the regulations, e.g. in sections 4740.4–2 and 4740.5. Further, the authorized officer could, on occasion, be faced with situations where a person might meet all the criteria of the definition, but still not be a desirable adopter for some reason left undefined.

It was suggested that the definition for "problem animal" as it presently appears in § 4700.0–5(e) be redefined. Since this definition was not under consideration in the proposed rulemaking it cannot be redefined in this final rule. A redefinition, however, is under consideration for the future.

Policy

As a result of suggestions made in some comments, the policy paragraph 4740.0–6(c)—has been revised to address itself only to those wild free-roaming horses and burros found on public lands and that the animals shall be considered "comparably with other resource values" in the development of resource management plans. And finally, the policy now provides for the "* * * allocation of appropriate portions of the available forage" to the animals when resource management plans are developed.

It was recommended by some comments that the policy contained in § 4700.0–6(d) be expanded to include the National Park Service and other agencies. This policy statement has been confined to the Forest Service and the Bureau of Land Management because they are the only two agencies, under the Secretarial level, mentioned in the Wild Horse and Burro Act. Additionally, the common boundaries of the two agencies are much more extensive than those with other agencies. The Bureau will cooperate with any agency where appropriate and possible. Coordination with other agencies is an integral part of the Bureau's planning regulations.

Inventory and Planning

Under § 4730.1(a) which deals with the inventory of wild free-roaming horses and burros, there was a question of how many animals constitute a herd. "Herd" has been defined by § 4700.0–5(c) and means one or more stallions and their mares or jacks and their jennies.

Also under § 4730.1(a), the frequency of "current inventories" was questioned. The National Academy of Sciences is presently studying the wild free-roaming horse and burro inventory procedures used by the Bureau. It was also recommended that there be periodic inventories of forage available for wild free-roaming horses and burros. This is essential to determine whether or not excess aminals are present on an area, but the frequency of the inventories has not yet been established.

There was a question as to how many animals must be present to be considered in multiple use planning. The answer is one or more.

It was recommended that § 4730(c)(2), which requires the determination of appropriate actions needed to achieve proper population levels, be expanded to require the maintenance of stable and viable breeding populations. This suggested change has not been added because it would not change the intent of the regulation as written.

Although there were many suggestions to identify additional persons or groups to be consulted about the actions necessary to protect, manage and control wild free-roaming horses and burros, only one change has been made in § 4730.1(d). Any State wildlife agency may be consulted now rather than only those within a given State. This has been done because a wildlife agency in Nevada might have information or experience that is applicable in Wyoming, or vice versa, as an example. It must be added that the paragraph allows the authorized officer to consult with anyone who has special expertise, knowledge or experience in the field of wild free-roaming horses or burros.

Concern was also expressed that the consultation process described in § 4730.1(d) would be too frequent. It is unlikely that reinventories and revisions of resource management plans will take

place often enough to cause any concern about this matter.

Capture

There were suggestions that the paragraph on "capture" specify a time limit for holding animals pending their disposal. A time limit has not been specified because of the differing numbers of applicants, availability of other ranges, relocation to distribution centers and problems of timing and availability of transportation. A time limit, with flexibility for special circumstances, is being considered for inclusion in a policy statement currently under development for wild free-roaming horses and burros.

Humane Use of Helicopters and Motor Vehicles

The section on the humane use of helicopters and motor vehicles which is part of the current regulations, was inadvertently left out of the proposed rulemaking. It is included and has been reintroduced here as § 4740.2 with minor changes from the current regulations.

A paragraph (c) has been added to this section. It sets out standards for the humane transportation of wild free-roaming horses and burros. Several comments expressed concern about humane transportation and suggested standards that would be too detailed for inclusion as regulations. These suggestions, however, will be given serious consideration when the Bureau of Land Management Manual is developed to provide detailed instructions for humane transportation.

Removal

To improve its clarity, § 4730.3 (which was § 4740.2 in the proposed rulemaking) has been restructured into three basic divisions: Paragraph (a) covers the removal of excess animals, paragraph (b) was inadvertently left out of the proposed rulemaking and has been reintroduced here from § 4740.3 of current regulations with minor nonsubstantive changes and paragraph (c) covers the removal of problem animals.

There were numerous expressions of concern that old, sick, or lame animals would be destroyed regardless of their overall physical condition. This is not the case and such fears should be allayed after reading the new definitions for old, sick and lame under § 4700.0–5.

It was apparent from some comments that there was a misunderstanding that all animals, once removed from an area, must be either destroyed, adopted or relocated. If the number of rounded-up animals is greater than the predetermined number of excess animals, then some of the animals cannot be considered excess and may be returned to the public lands.

Another apparent misunderstanding was that an old, sick or lame animal must be rounded-up before it can be humanely destroyed. This misunderstanding was, at least in part, caused by the oversight of not including in the proposed rules what is now § 4740.3(b) in this rulemaking, but is § 4740.3 of the existing regulations.

It was suggested that the authorized officer predict where excess animals would develop and remove the animals in advance of the buildup. Although there is much about biological communities that might be predictable most of the time, there is also an unpredictability—epidemic outbreaks of diseases, for example—that makes it imprudent to require predictions.

It was recommended that the expression "destroyed in the most humane manner possible" as used in §§ 4740.3 (a)(3) and (b) should be clarified and interpreted. The need to destroy an animal can occur under such a wide variety of circumstances and times that a set of guidelines for destruction is impractical. An animal could be found at locations or under weather conditions that would preclude the use of a veterinarian to provide the most humane method. It is possible also that there could be disagreement among veterinarians themselves as to what method is most humane. This is further complicated by the continual development of new and improved drugs.

Also in connection with the circumstances that make it necessary to destroy an animal, the regulations have been rewritten to emphasize that humane destruction is the primary consideration and that cost effectiveness is secondary.

Acts of Mercy

Comments about acts of mercy (§ 4740.3–1) suggested that there be provision for destroying an animal at the site of capture. The authorized officer is allowed this discretion by section 4740.3(c). It was also suggested that there be provision for acts of mercy applicable to adopted animals. Section 4740.3–1 is intended to apply to all animals whether adopted or not. In connection with this, it is reasonable to assume that a veterinarian would make mention of an act of mercy in the statement required by § 4740.4–2(f).

There were also recommendations as to which drugs to use—and not to use—in performing an act of mercy. As mentioned previously, this is considered impractical because of the possible variations in the opinions of veterinarians and the continual development of new drugs.

It was suggested that an animal not lose its status as a wild free-roaming horse or burro if adopted prior to the effective date of these regulations. The apparent concern here was that title to large numbers of animals might be granted to someone who would sell them to a slaughterhouse upon receipt of title. Since the authorized officer cannot grant title for more than four animals per year to any qualified adopter, that small number would limit the potential for making a business of selling animals for conversion to commercial products.

There was concern expressed that the natural death of an animal referred to in § 4740.3–2(b) could not be verified. This possibility is covered in § 4740.4–2(f) which requires that the authorized officer receive a written statement of a veterinarian of the apparent cause of death.

One comment questioned how one would be able to distinguish between an animal that is a wild free-roaming horse or burro and one that has become the legal property of an adopter. The legal ownership of a former wild free-roaming horse or burro can be confirmed with a certificate of title showing that ownership of the animal has been transferred. This concept has been incorporated into § 4760.2(m).

The second sentence of § 4740.3–3, which addresses the disposal of carcasses, has been deleted because its intent is provided for under the prohibited acts of § 4760.2(e) which states, in part, that no consideration can be received for the remains of a wild free-roaming horse or burro that has not lost its status as such.

Many comments wanted to know how a processing plant could establish that a carcass bearing a Bureau of Land Management brand had passed to private ownership. An explanation of this process has been incorporated into the provision of § 4760.2(m) which requires that a carcass be accompanied by a certificate of title to the animal.

Relocation on Public Lands

Concern was expressed that it is too restrictive to limit the relocation of wild free-roaming horses and burros to the public lands they were using as of December 15, 1971. Section 9 of the Act is quite clear on the point that the Secretary shall not relocate animals to areas where they did not exist when the Act was passed.

Custodial Arrangements

Concern was expressed that staffing will be inadequate to administer the

custodial arrangements regulations. Regulations establish programs, but do not determine personnel requirements or ceilings. It is expected that the programs established by these regulations will be adequately funded through the normal budgeting process.

Considerable concern was expressed about the number of wild free-roaming horses and burros that could be adopted in any one year and particularly as it applied to families. After careful consideration of these concerns, it has been decided not to limit by regulation the number of animals a family may adopt. The possibility of incorporating such a provision into the regulations will be reconsidered if experience shows that a uniform policy established by regulations is necessary or desirable.

There was an obvious uneasiness among the comments with regard to the adoption of more than four animals per year as provided in § 4740.3–2(c). There were also numerous suggested actions for the authorized officer to follow to assure that these animals would receive humane treatment and not be commercially exploited or sold by adopters. That an authorized officer is required to justify these additional adoptions in writing should, in itself, provide assurance of humane treatment and protection. Detailed instructions, which tell the authorized officer how to determine who should receive additional animals, are more appropriate for inclusion in the Bureau of Land Management Manual. Furthermore, an adopter cannot gain title to more than four animals in any one year regardless of the total number adopted. This limitation should provide further assurance that selling so few animals for conversion to commercial products would limit the potential for making this a business operation.

It was suggested that the Bureau of Land Management make systematic inspections of all adopted animals as a means of carrying out the intent of § 4740.4–2(e). The logistics involved in such an endeavor would make this next to impossible. However, there will be inspections of adopted animals whenever possible.

There was a question as to what an authorized officer would do with an animal that was repossessed under the provisions of § 4740.4–2(e). In such a situation, the authorized officer would determine whether or not the animal could be returned to the public lands and if not, the provisions under § 4740.3(a), which provide for the disposition of excess animals, would be followed.

As a result of many comments received regarding § 4740.4–2(f), which explains what to do when an adopted animal dies, the paragraph has been changed to provide that, within seven days of death, the transferee shall furnish the authorized officer with a veterinarian's written statement of the apparent cause of death.

Granting of Title

There were some questions as to whether or not the requirements of § 4740.5 (granting of title) would apply to horses that were adopted prior to the effective date of these regulations. The regulations have been amended to show that they apply to all animals adopted after December 15, 1971.

The comments suggested that, in addition to licensed veterinarians, others be authorized to write the statement required for the granting of title in § 4740.5(b). Limiting this authority to licensed veterinarians appears to be the best way to assure equal treatment of all adopters of wild free-roaming horses and burros.

There was a suggestion that when title passes, the Bureau of Land Management brand the animal to signify the change of ownership. This would be impractical because the animals are so widely distributed geographically. Giving the adopter a certificate of title is a sufficient and more practical way of providing proof of ownership.

Concern was expressed that title could be passed to persons with prior records of animal abuse, death or "loss." If there is abuse, the authorized officer can recover an animal under the provisions of § 4740.4–2(e), and additionally it is required in § 4740.5(b) that an application for title be accompanied by a veterinarian's written statement that the animal has been humanely treated in the year prior to application. Furthermore, when an animal dies, § 4740.4–2(f) now requires that an adopter furnish the authorized officer with a veterinarian's written statement of the apparent cause of death. As regards the loss of animals, there will be a record search by the Bureau of Land Management to determine if there is evidence of prior unaccountable losses.

Prohibited Acts

Section 4760.2(e) has been changed so that it now prohibits the sale of a wild free-roaming horse or burro or its remains unless it has lost its status as such.

As a result of a suggestion from one comment, the word "allows" in § 4760.2(g) has been replaced with "is responsible for."

The words "in a rodeo or similar contest" have been removed from the prohibited acts in § 4760.2(h) because wild free-roaming horses or burros could possibly be used for bucking stock in other, less formal, situations.

It has been suggested that adopters be required to produce an animal for inspection at any time rather than after receipt of a written notice as required in § 4760.2(i). This suggestion has not been adopted because there are too many circumstances under which it would be unreasonable.

There were suggestions that § 4760.2(i), as written in the proposed rulemaking, be changed so that the 14-day notice of death requirement be reduced to seven days. This has been accomplished by removing the requirement from § 4760.2(i) and inserting a newly written § 4760.2(j) which contains a seven-day requirement.

Section 4760.2(k) has been changed, in part, to read "* * * official mark * * *" instead of "* * * official freeze mark * * *" because the Bureau of Land Management has used other marking systems in the past and possibly could change in the future.

Section 4760.2(m) has been added to the prohibited acts to assure that a conscientious effort has been made to capture escaped wild free-roaming horses or burros.

Section 4760.2(n) has been added as a prohibited act in order to prevent the acceptance of a Bureau of Land Management-marked horse or burro without a certificate providing evidence that title to the animal has been transferred.

Section 4760.2(o) has also been added as a prohibited act to require a one-year retention of the title to a Bureau of Land Management-marked animal that has been accepted for slaughter or destruction.

Editorial and clarification changes in the proposed regulations have been made as needed.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Act of December 15, 1971, as amended, (16 U.S.C. 1331 et seq.) commonly referred to as the Wild Free-Roaming Horse and Burro Act, Part 4700, Subchapter D, Chapter 2, Title 43 of the Code of Federal Regulations is amended as set forth below.

December 18, 1979.

Guy R. Martin,

Assistant Secretary of the Interior.

1. Section 4700.0–5 is amended to revise subsection (d) and to add five

new subsections (n), (o), (p), (q), and (r) as follows:

§ 4700.0–5 Definitions.

* * * * *

(d) "Excess animals" means wild free-roaming horses or burros (1) which have been removed from an area by the authorized officer pursuant to applicable law or, (2) which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area.

* * * * *

(n) "Commercial exploitation" means using a wild free-roaming horse or burro, because of its characteristics of wildness, for direct or indirect financial gain. Characteristics of wildness include the rebellious and feisty nature of such animals and their defiance of man as exhibited in their undomesticated and untamed state. Uses such as saddle or pack stock or other uses that require domestication of the animal are not commercial exploitation of the animals because of their characteristics of wildness.

(o) "Inhumane treatment" means causing physical stress to an animal through any harmful action or omission that is not compatible with standard animal husbandry practices; causing or allowing an animal to suffer from a lack of necessary food, water or shelter; using any equipment, apparatus, or technique during transportation, domestication or handling that causes undue injury to an animal; or failing to treat or care for a sick or injured animal.

(p) "Old" means a wild free-roaming horse or burro characterized by its inability to fend for itself because of age, physical deterioration, suffering or closeness to death.

(q) "Sick" means a wild free-roaming horse or burro with failing health, infirmness or disease from which there is little chance of recovery.

(r) "Lame" means a wild free-roaming horse or burro with malfunctioning muscles, ligaments or limbs that impair its freedom of movement.

2. Section 4700.0–6 is amended by adding new paragraphs (c) and (d) as follows:

§ 4700.0–6 Policy.

* * * * *

(c) Wild free-roaming horses and burros where found on public lands shall be considered comparably with other resource values in the development of resource management plans under the Bureau's planning system including allocation of appropriate portions of the available forage.

(d) Where wild free-roaming horses and burros use, as part of their habitat, public lands administered by the Bureau of Land Management and lands in the National Forest system, the Bureau of Land Management shall cooperate to the fullest extent with the Forest Service in the management of these animals.

3. Section 4730.1 is revised to read as follows:

§ 4730.1 Inventory and planning.

(a) A current inventory of wild free-roaming horses and burros shall be maintained by the authorized officer for each area where a herd exists for the purpose of evaluating population dynamics including whether and where excess animals exist as a basis for making management decisions. Such inventory will be designed to estimate animal numbers, productivity, sex ratio and age structure for each herd.

(b) In planning for management, protection, and control of wild free-roaming horses and burros, including determination of desirable numbers and other management requirements of these regulations, the authorized officer will utilize the Bureau's multiple use planning system.

(c) Using the information developed from inventory data and planning the authorized officer shall determine—

(1) Appropriate protection and management for wild free-roaming horses and burros on the management areas under consideration; and

(2) The appropriate actions needed to achieve proper population levels.

(d) In making these determinations, the authorized officer shall consult with the U.S. Fish and Wildlife Service, State wildlife agencies, individuals independent of Federal or State government recommended by the National Academy of Sciences, and any other individuals who he determines have scientific expertise or special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management.

4. Subpart 4740 is revised in its entirety to read as follows:

Subpart 4740—Removal and Relocation of Excess or Problem Animals

Sec.

4740.1 Capture.
4740.2 Humane use of helicopters and motor vehicles.
4740.3 Removal.
4740.3–1 Acts of mercy.
4740.3–2 Loss of status.
4740.3–3 Disposal of carcasses.
4740.4 Relocation.
4740.4–1 Relocation on public lands.
4740.4–2 Custodial arrangements.
4740.5 Granting of title.

Subpart 4740—Removal and Relocation of Excess or Problem Animals

§ 4740.1 Capture.

Under the supervision of the authorized officer, where it has been determined necessary, wild free-roaming horses and burros may be captured, corralled and held in a humane manner. All excess or problem animals will be held under humane conditions pending disposal under the provisions of this Subpart.

§ 4740.2 Humane use of helicopters and motor vehicles.

(a) The use of helicopters is authorized to locate the animals involved and for related purposes such as to transport personnel and equipment. The condition of the animals shall be continuously observed by the authorized officer and should signs of unnecessary stress be noted, the source of stress shall be removed so as to allow for recovery. Helicopters may be used in roundups or other capture operations subject to the following humane procedures:

(1) Helicopters shall be used in such a manner that bands or herds will tend to remain together.

(2) The rate of movement shall not exceed limitations set by the authorized officer who shall consider terrain, weather, distance to be traveled, and condition of animals.

(3) The helicopter shall be used to enable the authorized officer to look for the presence of dangerous areas and move the animals away from hazards during the capture operation.

(4) During capture operations, animals shall be moved in such a way as to prevent unnecessary stress or injury.

(b) Motor vehicles may be used for the purposes of transporting captured animals, subject to the following humane procedures:

(1) All such transportation shall be in compliance with appropriate State and Federal laws and regulations applicable to the humane transportation of horses and burros.

(2) Vehicles shall be in good repair, of adequate rated capacity, and carefully operated so as to insure that captured animals are transported without undue risk of injury.

(3) Vehicles shall be inspected and approved by an authorized officer prior to use.

(4) Where necessary and practical, animals shall be sorted as to age, size, temperament, sex, and condition when transporting them so as to minimize, to the extent possible, injury due to fighting and trampling.

(5) The authorized officer shall consider the condition of the animals, weather conditions, type of vehicles, and distance to be transported when planning for the movement of captured animals.

(c) The transportation of wild free-roaming horses and burros shall be under humane conditions. Unless otherwise approved by the authorized officer, transportation shall be limited, in sequence, to a maximum of 24 hours followed by a minimum of 5 hours of on-the-ground rest with adequate feed and water.

§ 4740.3 Removal.

(a) The authorized officer, after making a determination that there are excess animals in an area shall immediately take action to remove those animals from the public lands. Such action shall be taken in the following order and priority, until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from deterioration associated with overpopulation:

(1) Old, sick, or lame animals shall be destroyed in the most humane manner possible. If there are equally humane methods, the most cost efficient may be selected.

(2) Any additional excess animals shall be humanely captured and removed for maintenance and care for which the authorized officer determines an adoption demand exists by qualified persons, organizations, or agencies and for which he determines he can assure humane treatment and care (including proper transportation, feeding, and handling).

(3) Additional excess animals for which an adoption demand by qualified individuals does not exist shall be destroyed in the most humane manner possible. If there are equally humane methods, the most cost efficient may be selected.

(b) Where the authorized officer finds it necessary to remove excess animals from areas of the public lands, and he determines that it is not practical to relocate them on public lands or capture and remove them for maintenance, he may destroy such animals in the most humane manner possible. No person, except the authorized officer or his authorized representative, shall destroy wild free-roaming horses and burros.

(c) The authorized officer, after making a determination that there are problem animals in an area and that action is required, shall humanely remove the animals and may dispose of them in the same manner as excess animals including the relocation or return to the public lands.

§ 4740.3-1 Acts of mercy.

Any severely injured or seriously sick animals will be destroyed in the most humane manner possible as an act of mercy.

§ 4740.3-2 Loss of status.

Wild free-roaming horses and borros or their remains shall lose their status as such—

(a) Upon passage of title under § 4740.5 of this part;

(b) If they have been transferred for private maintenance or adoption pursuant to this Act and die of natural causes before passage of title;

(c) Upon destruction by the authorized officer or his designee pursuant to section 3(b) of the Act;

(d) If they die of natural causes on the public lands or on private lands where maintained thereon pursuant to section 4 of the Act and disposal is authorized by the authorized officer or his designee; or

(e) Upon destruction or death for purposes of or incident to the program authorized in section 3 of the Act.

§ 4740.3-3 Disposal of carcasses.

Carcasses of animals that have lost their status as wild free-roaming horses and burros may be disposed of in any customary manner. However, no consideration of any kind shall be received by any person who transfers the remains of a wild free-roaming horse or burro, that has not lost its status as such, to a rendering plant or other facility for disposal.

§ 4740.4 Relocation.

Wild free-roaming horses and burros may be relocated when: (1) The authorized officer determines there are excess animals in an area; (2) They have been removed from private lands under § 4750.3 of this title; (3) They are problem animals; or (4) the authorized officer determines that proper resource and herd management requires such action.

§ 4740.4-1 Relocation on public lands.

(a) Wild free-roaming horses and burros shall not be introduced by relocation to areas of public land that were not being used by wild free-roaming horses or burros as all or part of their habitat on December 15, 1971.

(b) Before wild free-roaming horses and burros are relocated to a different area of the public lands a written determination shall be made by the authorized officer that the action meets the requirements of the Bureau of Land Management's resource management plans and that the area has an adequate allocation of forage for the animals relocated.

§ 4740.4-2 Custodial arrangements.

(a) The authorized officer may transfer for private maintenance or adoption up to 4 wild free-roaming horses or burros per year to any qualified person, organization, or government agency.

(b) Wild free-roaming horses and burros shall be transferred only to an applicant of a legal age in the State in which the applicant resides.

(c) Notwithstanding the provision of subsection (a) hereof, more than four animals per year may be transferred to any qualified person, organization, or agency for adoption if the authorized officer determines in writing that the applicant is capable of humanely transporting and caring for the additional animals.

(d) Before wild free-roaming horses and burros are transferred, the applicant shall sign a cooperative agreement that incorporates provisions for custodial maintenance including but not limited to provisions for proper maintenance of the animals and protection from inhumane treatment and commercial exploitation.

(e) If the authorized officer determines that an adopted wild free-roaming horse or burro is being commercially exploited, inhumanely treated, or treated in a manner that violates a provision of the cooperative agreement, he may take immediate possession of the animal.

(f) If a wild free-roaming horse or burro that has been transferred for private maintenance or adoption dies, the transferee shall, within 7 days of the death, furnish the authorized officer with a veterinarian's written statement of the apparent cause of death.

(g) Persons, organizations, or agencies who receive wild free-roaming horses or burros that have been previously transferred for private maintenance or adoption shall be subject to all the provisions of these regulations. No wild free-roaming horse or burro shall be transferred without the approval of the authorized officer.

(h) At the request of the transferee, the authorized officer may transfer custody of wild free-roaming horses and burros to another qualified applicant.

§ 4740.5 Granting of title.

(a) The authorized officer may grant title to not more than four wild free-roaming horses and burros in any one year upon application of any qualified person, organization, or agency to whom these animals have been transferred for adoption. Applicants for granting of title

must be of legal age in the State in which they reside.

(b) Persons, organizations, or agencies who have provided humane conditions, treatment, and care for the animals they have adopted after December 15, 1971, for at least one year under a cooperative agreement with the Bureau of Land Management are qualified to apply for title to the animals. The application for a title shall include a written statement of a licensed veterinarian attesting to the best of his knowledge that the animals have been given humane treatment and care preceding the filing of the application.

(c) The application for title shall be on a form prescribed by the Director, Bureau of Land Management, and shall be filed at the office specified on the form.

5. Section 4760.2 is amended by revising paragraph (e); redesignating paragraph (f) as paragraph (p) and by adding paragraphs (f), (g), (h), (i), (j), (k), (l), (m), (n) and (o) to read as follows:

§ 4760.2 Prohibited acts.

* * * * *

(e) Sells, directly or indirectly, a wild free-roaming horse or burro, or the remains thereof which have not lost their status as a wild free-roaming horse or burro, or

(f) Uses a wild free-roaming horse or burro for commercial exploitation, or

(g) Causes or is responsible for the inhumane treatment of a wild free-roaming horse or burro, or

(h) Uses a wild free-roaming horse or burro for bucking stock, or

(i) Fails, upon written notice, to produce for inspection by an authorized officer those animals assigned to him for private maintenance under a cooperative agreement, or

(j) Fails to notify the authorized officer of the death of a wild free-roaming horse or burro within 7 days of death pursuant to § 4740.4–2(f) of this title, or

(k) Removes or attempts to remove, alters or destroys any official mark identifying a wild horse or burro, or its remains, or

(l) Being the assignee of a wild free-roaming horse or burro, or having charge or custody of the animal, abandons the animal without making arrangements for necessary food, water and shelter, or

(m) Being the assignee of a wild free-roaming horse or burro, or having charge or custody of the animal, fails to diligently pursue in an attempt to capture the escaped animal, or

(n) Accepts for slaughter or destruction a horse or burro bearing an official Bureau of Land Management identification mark, and which is not accompanied by a certificate that title to the animal has been transferred, or

(o) After acceptance of an animal for slaughter or destruction, fails to retain for one year the certificate of title to a horse or burro bearing an official Bureau of Land Management identification mark, or

[FR Doc. 79-39258 Filed 12-27-79; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1780

[Circular No. 2455]

Cooperative Relations; Advisory Committees

Under the authority of the Federal Advisory Committee Act (5 U.S.C. Appendix 1), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978, Subpart 1784, Part 1780, Group 1700, Subchapter A, Chapter II, Title 43 of the Code of Federal Regulations is revised as set forth below.

PART 1780—COOPERATIVE RELATIONS

Subpart 1784—Advisory Committees

Sec.

1784.0–1 Purpose.
1784.0–2 Objectives.
1784.0–3 Authority.
1784.0–5 Definitions.
1784.0–6 Policy.
1784.1 Establishment, duration, termination, and renewal.
1784.1–1 Establishment.
1784.1–2 Duration, termination, renewal.
1784.2 Composition, avoidance of conflict of interest.
1784.2–1 Composition.
1784.2–2 Avoidance of conflict of interest.
1784.3 Member service.
1784.4 Public participation.
1784.4–1 Calls for nominations.
1784.4–2 Notice of meetings.
1784.4–3 Open meetings.
1784.5 Operating procedures.
1784.5–1 Functions.
1784.5–2 Meetings.
1784.5–3 Records.
1784.6 Committees.
1784.6–1 National public lands advisory council.
1784.6–2 [Reserved]
1784.6–3 California Desert Conservation Area advisory committee.
1784.6–4 District advisory councils.
1784.6–5 Grazing advisory boards.

Authority: 5 U.S.C. Appendix 1, 43 U.S.C. 1701 et. seq.

Subpart 1784—Advisory Committees

§ 1784.0–1 Purpose.

This subpart contains standards and procedures for the creation, operation and termination of advisory committees to advise the Secretary of the Interior and Bureau of Land Management on matters relating to public lands and resources under the administrative jurisdiction of the Bureau of Land Management.

§ 1784.0–2 Objectives.

The objective of advisory committees established under these regulations is to make available to the Department of the Interior and Bureau of Land Management the expert counsel of concerned, knowledgeable citizens and public officials regarding both the formulation of operating guidelines and the preparation and execution of plans and programs for the use and management of public lands, their natural and cultural resources, and the environment.

§ 1784.0–3 Authority.

(a) The Federal Advisory Committee Act (5 U.S.C. Appendix 1) requires establishment of a system governing advisory committees in the Executive Branch of the Federal Government and specifies policies, procedures, and responsibilities for committee creation, management and termination.

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.) requires—

(1) Establishment of advisory councils representative of major citizen interests concerned with resource management planning or the management of public lands;

(2) Creation of a California Desert Conservation Area Advisory Committee; and

(3) Under certain conditions, establishment of at least one grazing advisory board for each Bureau of Land Management administrative district in the 16 contiguous Western States.

(c) Section 2 of the Reorganization Plan No. 3 of 1950 (5 U.S.C. Appendix, as amended; 64 Stat. 1262), authorizes the Secretary of the Interior to make provisions deemed appropriate authorizing the performance by any other officer, or by any agency or employee or the Department of the Interior of any Departmental function. The establishment of advisory committees is deemed an appropriate action.

§ 1784.0–5 Definitions.

As used in this subpart, the term:

(a) "Advisory committee" means any committee, council, or board established or utilized for purposes of obtaining advice or recommendations.

(b) "Secretary" means Secretary of the Interior.

(c) "Director" means the Director of the Bureau of Land Management.

(d) "Authorized representative" means the Federal officer or employee designated by an advisory committee charter who approves meeting agendas and attends all meetings of the committee and its subcommittees, if any.

(e) "Public lands" means any lands and interest in lands owned by the United States administered by the Secretary of the Interior through the Bureau of Land Management, except:

(1) Lands located on the Outer Continental Shelf; and

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

§ 1784.0–6 Policy.

As part of the Department's program for public participation, it is the policy of the Secretary to establish and employ committees representative of major citizens' interests, or where required by law, of special citizen interests, to advise the Secretary and Director regarding policy formulation, program planning, decisionmaking, attainment of program objectives, and achievement of improved program coordination and economies in the management of public lands and resources; to regularly ensure that such committees are being optimally employed; and to limit the number of advisory committees to that essential to the conduct of the public's business.

§ 1784.1 Establishment, duration, termination, and renewal.

§ 1784.1–1 Establishment.

(a) An advisory committee required by statute is established or renewed upon the filing of a charter, signed by the Secretary, with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the

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Circular Distribution List

United States House of Representatives.

(b) An advisory committee not specifically required by statute shall be established only when the Secretary has—

(1) Determined as a matter of formal record, after consultation with the General Services Administration, that establishment of the committee is in the public interest in connection with duties required of the Department of the Interior by law;

(2) Signed and filed the committee charter; and

(3) Published in the **Federal Register** a notice of his determination and of the establishment of the committee.

(c) An advisory committee shall not meet or take any action until the Committee's charter has been signed by the Secretary and copies filed with the appropriate committees of the Senate and House of Representatives and the Library of Congress.

§ 1784.1-2 Duration, termination, and renewal.

(a) An advisory committee not mandated by statute, i.e., established at the discretion of the Secretary, shall terminate not later than 2 years after its establishment unless, prior to that time, it is rechartered by the Secretary and copies of the new charter are filed with the appropriate committees of the Senate and House of Representatives. Any committee so renewed shall continue for not more than 2 additional years unless, prior to expiration of such period, it is again rechartered.

(b) Any advisory committee mandated by statute shall terminate not later than 2 years after the date of its establishment unless its duration is otherwise provided by law. Upon the expiration of each successive two-year period following date of establishment, a new charter shall be prepared and, after Secretarial approval, filed with the appropriate committees of the Senate and House of Representatives for any statutory advisory committee being continued.

§ 1784.2 Composition, avoidance of conflict of interest.

§ 1784.2-1 Composition.

(a) Each advisory committee shall be structured to provide fair membership balance, both geographic and interest-specific, in terms of the functions to be performed and points of view to be represented, as prescribed by its charter. Each shall be formed with the objective of providing representative counsel and advice about public land and resource planning, retention, management and disposal. No person is to be denied an opportunity to serve because of race, age, sex, religion or national origin.

(b) Only an individual who holds a lease or permit to graze livestock upon public lands under the jurisdiction of a Bureau of Land Management District Office shall be eligible to serve as a member of a grazing advisory board.

(c) Individuals shall qualify to serve on an advisory committee other than a grazing advisory board because their education, training, or experience enables them to give informed and objective advice regarding an industry, discipline, or interest specified in the charter.

§ 1784.2-2 Avoidance of conflict of interest.

(a) Persons or employees of organizations who hold leases, licenses, permits, contracts or claims which involve lands or resources administered by the Bureau of Land Management normally shall not serve on advisory committees except—

(1) Holders of grazing permits and leases may serve on grazing advisory boards;

(2) That the lack of candidates make them the only available candidates; or

(3) When they have special knowledge or experience which is needed to accomplish the committee functions to be performed.

(b) No advisory committee or board member, including a grazing advisory board member, shall participate in deliberations or vote on any matter in which the advisor has a direct interest.

§ 1784.3 Member service.

(a) Elections or appointments to an advisory committee shall be for two-year terms unless a shorter period is specified in the charter, the election procedures, or the appointing document. Terms of service normally shall coincide with duration of the committee charter. Individuals can be reelected to additional two-year terms of service on grazing boards without limit. Members of other advisory committees may be reappointed to additional terms at the discretion of the authorized appointing official.

(b) Committee members advise and report only to the official(s) specified in the charter. Service as an advisor, however, does not limit the rights of a member acting as a private citizen or as a member or official of another organization.

(c) The Secretary or his authorized representative may, after written notice, terminate the service of an advisor if, in the judgment of the Secretary or his authorized representative, such removal is in the public interest, or if the advisor—

(1) No longer meets the requirements under which elected or appointed:

(2) Fails or is unable to participate regularly in committee work; or

(3) Has violated Federal law or the regulations of the Secretary.

(d) For purposes of compensation, members of advisory committees, except for grazing advisory board members, shall be reimbursed for travel and per diem expenses when on advisory committee business, as authorized by 5 U.S.C. 5703.

§ 1784.4 Public participation.

§ 1784.4-1 Calls for nominations.

Except where otherwise provided, candidates for appointment to advisory committees are sought through public calls for public nominations. Such calls shall be published in the **Federal Register** and are made through media releases and systematic contacts with individuals and organizations interested in the use and management of public lands and resources.

§ 1784.4-2 Notice of meetings.

(a) Notices of meetings of advisory committees and any subcommittees that may be formed shall be published in the **Federal Register** and distributed to the media 30 days in advance of a meeting. However, if urgent matters arise, notices of meetings of advisory committees and any subcommittees shall be published in the **Federal Register** and distributed to the media at least 15 days in advance of a meeting.

(b) Notices shall set forth meeting locations, topics or issues to be discussed, and times and places for the public to be heard.

§ 1784.4-3 Open meetings.

(a) All advisory committee and subcommittee meetings and associated field examinations shall be open to the public and news media.

(b) Anyone may appear before or file a statement with a committee or subcommittee regarding matters on a meeting agenda.

(c) The scheduling of meetings and the preparation of agendas shall be done in a manner that will encourage and facilitate public attendance and participation. The amount of time scheduled for public presentations and meeting times may be extended when the authorized representative considers it necessary to accommodate all who seek to be heard regarding matters on the agenda.

§ 1784.5 Operating procedures.

§ 1784.5-1 Functions.

The function of an advisory committee is solely advisory, and recommendations shall be made only to the authorized representative specified in its charter. Determinations of actions to be taken on the reports and recommendations of a committee shall be made only by the Secretary or his authorized representative.

§ 1784.5-2 Meetings.

(a) Advisory committees shall meet only at the call of the Secretary or his authorized representative.

(b) No meeting shall be held in the absence of the Secretary or his

authorized representative.

(c) Each meeting shall be conducted with close adherence to an agenda which has been approved in advance by the authorized representative.

(d) The authorized representative may adjourn an advisory committee meeting at any time when—

(1) Continuance would be inconsistent with either the purpose for which the meeting was called or the established rules for its conduct; or

(2) Adjournment is determined to be in the public interest.

§ 1784.5-3 Records.

(a) Detailed records shall be kept of each meeting of an advisory committee and any subcommittees that may be formed. These records shall include as a minimum—

(1) The time and place of the meeting;

(2) Copies of the **Federal Register** and other public notices announcing the meeting;

(3) A list of advisors and Department or Bureau employees present;

(4) A list of members of the public present and who each represented;

(5) The meeting agenda;

(6) A complete and accurate summary description of matters discussed and conclusions reached;

(7) A list of recommendations made by the advisory committee;

(8) Copies of all reports received, issued, or approved by the Committee or subcommittee; and

(9) A description of the nature of public participation. The Chairperson of the advisory committee shall certify to the accuracy of meeting records.

(b) All records, reports, transcripts, minutes, recommendations, studies, working papers, and other documents prepared by or submitted to an advisory committee shall be available for public inspection and copying in the Bureau of Land Management office responsible for support of that committee. Upon request, copies shall be provided at the cost of duplication as established by the regulations in 43 CFR Part 2 (Appendix A).

§ 1784.6 Membership and functions of committees.

§ 1784.6-1 National Public Lands Advisory Council.

(a) Biennially, the Director shall submit to the Secretary a list of member nominations obtained from recommendations made by individuals, organizations and associations concerned with public land and resource management. From this list and from other sources, the Secretary shall appoint not less than 10 nor more than 17 members to represent the interests, services or disciplines specified in the Council charter. At least one member shall be an elected official of general purpose government. The Council shall elect its own officers.

(b) The National Public Lands Advisory Council shall advise the Secretary, through the Director, as to regulations, policies, plans and programs of national scope relative to public lands and resources under the jurisdiction of the Bureau of Land Management.

(c) The Council shall meet at the call of the Director. The Director or the Director's designee shall be the authorized representative at all meetings of the Council and committees that may be formed.

(d) Administrative support for the Council shall be the responsibility of the Director.

§ 1784.6-2 [Reserved]

§ 1784.6-3 California Desert Conservation Area Advisory Committee.

(a) The Director shall submit biennially to the Secretary a list of nominations for membership received following public calls for nominations. From this list and from other sources, the Secretary shall appoint 15 members to represent the interests, services, and disciplines specified by the Committee charter. One member shall be an elected official of general purpose government serving within the California Desert Conservation Area.

(b) The California Desert Conservation Area Advisory Committee advises the Secretary, through the Bureau of Land Management, regarding the preparation and implementaiton of a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area of Southern California.

(c) The Committee and any subcommittee(s) formed shall meet at the call of the California State Director, Bureau of Land Management, and elect their own officers. The California State Director, or a designee, shall be the authorized representative at all meetings of the Committee and its subcommittees.

(d) Administrative support shall be provided by the office of the California State Director.

(e) The Committee shall terminate no later than December 31, 1981.

§ 1784.6-4 District advisory councils.

(a) An advisory council shall be established for each Bureau of Land Management District.

(b) Biennially, following public calls for nominations, the Secretary or his designee shall appoint not less than 10 nor more than 15 individuals to serve on the council. One of the appointees shall be an elected official of general purpose government serving within the District. Membership shall be balanced to reflect the various elements in the plans and programs for the District.

(c) A district advisory council advises the Bureau of Land Management District Manager to whom it reports regarding multiple use plans and programs for public lands and resources under the jurisdiction of that District.

(d) A District advisory council and its subcommittee(s) shall meet at the call of the District Manager and elect their own officers. The District Manager or a designee shall be the authorized representative at all meetings of the council and its subcommittees.

(e) Administrative support for a District advisory council and its subcommittees shall be provided by the office of the District Manager to whom it reports.

§ 1784.6-5 Grazing advisory boards.

(a) At least one grazing advisory board shall be established in each District office of the 16 contiguous Western States—

(1) Having jurisdiction over more than 500,000 acres of land subject to commercial livestock grazing; and

(2) Upon petition of a simple majority of public land livestock lessees and permittees under the jurisdiction of the District Office.

(b) The District Manager to whom the board reports shall call biennially for nominations from grazing lessees and permitees under the jurisdiction of the District office. From such nominations, the lessees and permittees shall, in turn, elect no less than 5 nor more than 8 individuals to serve on the board. Member service shall be without cost to the Government.

(c) The advice and recommendations to the District Manager by a grazing advisory board shall be limited to matters regarding—

(1) The development of allotment management plans; and

(2) The utilization of range-betterment funds.

(d) A grazing advisory board shall meet at least once a year at the call of the District Manager to whom it reports, and shall elect its own chairperson. The District Manager or a designee shall be the authorized representative at all meetings.

(e) Administrative support for a grazing advisory board shall be provided by the office of the District Manager to whom the board reports.

(f) All grazing advisory boards established under these regulations shall terminate December 31, 1985.

Guy R. Martin,

Assistant Secretary of the Interior.

January 30, 1980.

[FR Doc. 80-3638 Filed 2-5-80; 8:45 am]

GPO 855-019

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[Circular No. 2456]

Oil and Gas Leasing; Simultaneous Oil and Gas Drawing Procedures

Under the authority of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), and related laws, Part 3110, Group 3100, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations, is amended as set forth.

1. Section 3110.1–4 is amended by amending paragraph (b) as follows:

§ 3110.1–4 Withdrawal of offer.

* * * * *

(b) *Simultaneous filings.* An applicant may withdraw his simultaneous drawing entry card prior to the drawing, except as provided in 3112.2–1(a)(5).

2. Section 3112.2–1(a) is amended by adding a new paragraph (5) as follows:

§ 3112.2–1 Offer to lease.

* * * * *

(a) * * *

* * * * *

(5) If a properly filed drawing entry card is omitted from the drawing, a new drawing shall be held. An omitted card may not be withdrawn by the applicant. The new drawing shall consist of the omitted card(s) and the number of blank cards equal to the number of cards which participated in the first drawing. Such drawing shall be conducted in the same manner as the original drawing. If the omitted card(s) is not drawn in the first, second, or third priority in the new drawing, the priority established in the original drawing shall stand. However, if an omitted card is drawn in the first, second, or third priority it shall displace the cards drawn with the same and lower priorities in the original drawing. No card chosen in the first drawing shall be eliminated from priority as a result of the drawing of an omitted card in the redrawing. The number of priorities shall be increased as necessary.

Guy R. Martin,

Assistant Secretary of the Interior.

February 5, 1980.

[FR Doc. 80–4155 Filed 2–7–80; 8:45 am]

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43 CFR Part 3800

[Circular No. 2457]

Exploration and Mining, Wilderness Review Program

Under the authority of section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782), Part 3800, Group 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regualtions is amended by adding subpart 3802 as follows.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

Subpart 3802—Exploration and Mining—Wilderness Review Program

Sec.

3802.0–1 Purpose.
3802.0–2 Objectives.
3802.0–3 Authority.
3802.0–5 Definitions.
3802.0–6 Policy.
3802.0–7 Scope.
3802.1 Plan of operations.
3802.1–1 When required.
3802.1–2 When not required.
3802.1–3 Operations existing on October 21, 1976.
3802.1–4 Contents of plan.
3802.1–5 Plan approval.
3802.1–6 Modification of plan.
3802.1–7 Existing operations.
3802.2 Bond requirements.
3802.3 Environmental protection.
3802.3–1 Environmental assessment.
3802.3–2 Requirements for environmental protection.
3802.4 General provisions.
3802.4–1 Noncompliance.
3802.4–2 Access.
3802.4–3 Multiple-use conflicts.
3802.4–4 Fire prevention and control.
3802.4–5 Maintenance and public safety.
3802.4–6 Inspection.
3802.4–7 Notice of suspension of operations.
3802.4–8 Cessation of operations.
3802.5 Appeals.
3802.6 Public availability of information.

Authority: 43 U.S.C. 1782.

Subpart 3802—Exploration and Mining, Wilderness Review Program

§ 3802.0–1 Purpose.

The purpose of this subpart is to establish procedures to prevent impairment of the suitability of lands under wilderness review for inclusion in the wilderness system and to prevent unnecessary or undue degradation by activities authorized by the United States Mining Laws and provide for environmental protection of the public lands and resources.

§ 3802.0–2 Objectives.

The objectives of this subpart are to:

(a) allow mining claim location, prospecting, and mining operations in lands under wilderness review pursuant to the United States Mining Laws, but only in a manner that will not impair the suitability of an area for inclusion in the wilderness system unless otherwise permitted by law; and

(b) assure management programs that reflect consistency between the United States Mining Laws, and other appropriate statutes.

§ 3802.0–3 Authority.

These regulations are issued under the authority of sections 302 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1782).

§ 3802.0–5 Definitions.

As used in this subpart, the term:

(a) "Reclamation", which shall be commenced, conducted and completed as soon after disturbance as feasible without undue physical interference with mining operations, means:

(1) Reshaping of the lands disturbed and affected by mining operations to the approximate original contour or to an appropriate contour considering the surrounding topography as determined by the authorized officer;

(2) Restoring such reshaped lands by replacement of topsoil; and

(3) Revegetating the lands by using species previously occurring in the area to provide a vegetative cover at least to the point where natural succession is occuring.

(b) "Environment" means surface and subsurface resources both tangible and intangible, including air, water, mineral, scenic, cultural, paleontological, vegetative, soil, wildlife, fish and wilderness values.

(c) "Wilderness Study Area" means a roadless area of 5,000 acres or more or roadless islands which have been found through the Bureau of Land Management wilderness inventory process to have wilderness characteristics (thus having the potential of being included in the National Wilderness Preservation System), and which will be subjected to intensive analysis through the Bureau's planning system, and through public review to determine wilderness suitability, and is not yet the subject of a Congressional decision regarding its designation as wilderness.

(d) "Impairment of suitability for inclusion in the Wilderness System" means taking actions that cause impacts, that cannot be reclaimed to the point of being substantially unnoticeable in the area as a whole by the time the Secretary is scheduled to make a recommendation to the President on the suitability of a wilderness study area for inclusion in the National Wilderness Preservation System or have degraded wilderness values so far, compared with the area's values for other purposes, as to significantly constrain the Secretary's recommendation with respect to the area's suitability for preservation as wilderness.

(e) "Mining claim" means any unpatented mining claim, millsite, or tunnel site authorized by the United States mining laws.

(f) "Mining operations" means all functions, work, facilities, and activities in connection with the prospecting, development, extraction, and processing of mineral deposits and all uses reasonably incident thereto including the construction and maintenance of means of access to and across lands subject to these regulations, whether the operations take place on or off the claim.

(g) "Operator" means a person conducting or proposing to conduct mining operations.

(h) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.

(i) "Wilderness inventory" means an evaluation conducted under BLM wilderness inventory procedures which results in a written description and map showing those lands that meet the wilderness criteria established under section 603(a) of the Federal Land Policy and Management Act.

(j) "Manner and degree" means that existing operations will be defined geographically by the area of active development and the logical adjacent (not necessarily contiguous) continuation of the existing activity, and not necessarily by the boundary of a particular, claim or lease, and in some cases a change in the kind of activity if the impacts from the continuation and change of activity are not of a significantly different kind than the existing impacts. However, the significant measure for these activities is still the impact they are having on the wilderness potential of an area. It is the actual use of the area, and not the existence of an entitlement for use, which is the controlling factor. In other words, an existing activity, even if impairing, may continue to be expanded

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Circular Distribution List

in an area or progress to the next stage of development so long as the additional impacts are not significantly different from those caused by the existing activity. In determining the manner and degree of existing operations, a rule of reason will be employed.

(k) "Valid existing right" means a valid discovery had been made on a mining claim on October 21, 1976, and continues to be valid at the time of exercise.

(l) "Undue and unnecessary degradation" means impacts greater than those that would normally be expected from an activity being accomplished in compliance with current standards and regulations and based on sound practices, including use of the best reasonably available technology.

(m) "Substantially unnoticeable" means something that either is so insignificant as to be only a very minor feature of the overall area or is not distinctly recognizable by the average visitor as being manmade or man-caused because of age, weathering or biological change.

§ 3802.0–6 Policy.

Under the 1872 Mining Law (30 U.S.C. 22 *et seq.*), a person has a statutory right consistent with other laws and Departmental regulations, to go upon the open (unappropriated and unreserved) public lands for the purpose of mineral prospecting, exploration, development, and extraction. The Federal Land Policy and management Act requires the Secretary to regulate mining operations in lands under wilderness review to prevent impairment of the suitability of these areas for inclusion in the wilderness system. However, mining operations occurring in the same manner and degree that were being conducted on October 21, 1976, may continue, even if they are determined to be impairing. Mining activities not exceeding manner and degree shall be regulated only to prevent undue and unnecessary degradation of public lands.

§ 3802.0–7 Scope.

(a) These regulations apply to mining operations conducted under the United States mining laws, as they affect the resources and environment or wilderness suitability of lands under wilderness review.

(b) These regulations apply to means of access across public land for the purpose of conducting operations under the United States mining laws.

§ 3802.1 Plan of operations.

An approved plan shall include appropriate environmental protection and reclamation measures selected by the authorized officer that shall be carried out by the operator. An operator may prepare and submit with a plan measures for the reclamation of the affected area.

§ 3802.1–1 When required.

An approved plan of operations is required for operations within lands under wilderness review prior to commencing:

(a) Any mining operations which involve construction of means of access, including bridges, landing areas for aircraft, or improving or maintaining such access facilities in a way that alters the alignment, width, gradient size, or character of such facilities;

(b) Any mining operations which destroy trees 2 or more inches in diameter at the base;

(c) Mining operations using tracked vehicles or mechanized earth moving equipment, such as bulldozers or backhoes;

(d) Any operations using motorized vehicles over other than "open use areas and trails" as defined in Subpart 6292 of this title, *off-road vehicles,* unless the use of a motorized vehicle can be covered by a temporory use permit issued under Subpart 8372 of this title;

(e) The construction or placing of any mobile, portable or fixed structure on public land for more than 30 days;

(f) On mining operations requiring the use of explosives; or

(g) Any operation which may cause changes in a water course.

§ 3802.1–2 When not required.

A plan of operations under this subpart is not required for—

(a) Searching for and occasionally removing mineral samples or specimens;

(b) Operating motorized vehicles over "open use areas and trails" as defined in 43 CFR Part 8340 so long as the vehicles conform to the operating regulations and vehicle standards contained in that subpart;

(c) Maintaining or making minor improvements of existing access routes, bridges, landing areas for aircraft, or other facilities for access where such improvements or maintenance shall not alter the alignment, width, gradient, size or character of such facilities; or

(d) Making geological, radiometric, geochemical, geophysical or other tests and measurements using instruments, devices, or drilling equipment which are transported without using mechanized earth moving equipment or tracked vehicles.

§ 3802.1–3 Operations existing on October 21, 1976.

A plan of operations shall not be required for operations that were being conducted on October 21, 1976, unless the operation is undergoing changes that exceed the manner and degree of operations on October 21, 1976. However, if the authorized officer determines that operations in the same manner and degree are causing undue or unnecessary degradation of lands and resources or adverse environmental effects, an approved plan containing protective measures may be required. Any changes planned in an existing operation that would result in operations exceeding the present manner and degree shall be delayed until the plan is processed under provisions of § 3802.1–5 of this title.

§ 3802.1–4 Contents of plan of operations.

(a) A plan of operations shall be filed in the District Office of the Bureau of Land Management in which the claim is located.

(b) No special form is required to file a plan of operations.

(c) The plan of operations shall include—

(1) The name and mailing address of both the person for whom the operation will be conducted, and the person who will be in charge of the operation and should be contacted concerning the reclamation or other aspects of the operation (any change in the mailing address shall be reported promptly to the authorized officer);

(2) A map, preferably a topographic map, or sketch showing present road, bridge or aircraft landing area locations, proposed road, bridge or aircraft landing area locations, and size of areas where surface resources will be disturbed;

(3) Information sufficient to describe either the entire operation proposed or reasonably foreseeable operations and how they would be conducted, including the nature and location of proposed structures and facilities;

(4) The type and condition of existing and proposed means of access or aircraft landing areas, the means of transportation used or to be used, and the estimated period during which the proposed activity will take place;

(5) If and when applicable, the serial number assigned to the mining claim, mill or tunnel site filed pursuant to Subpart 3833 of this title

§ 3802.1–5 Plan approval.

(a) The authorized officer shall promptly aknowledge the receipt of a plan of operations and within 30 days of receipt of the plan act on the plan of operations to determine its acceptability.

(b) The authorized officer shall review the plan of operations to determine if the operations are impairing the suitability of the area for preservation as wilderness. Pending approval of the plan of operations, mining operations may continue in a manner that minimizes environmental impacts as prescribed in § 3802.3 of this title. After completing the review of the plan of operations, the authorized officer shall give the operator written notice that: (1) The plan is approved subject to measures that will prevent the impairment of the suitability of the area for preservation as wilderness as determined by the authorized officer; (2) Plans covering operations on a claim with a valid existing right are approved

subject to measures that will prevent undue and unnecessary degradation of the area; or (3) the anticipated impacts of the mining operations are such that all or part of further operations will impair the suitability of the area for preservation as wilderness, the plan is disapproved and continuance of such operations is not allowed.

(c) Upon receipt of a plan of operations for mining activities commencing after the effective date of these regulations, the authorized officer may notify the operator, in writing, that:

(1) In an area of lands under wilderness review where an inventory has not been completed, an operator may agree to operate under a plan of operations that includes terms and conditions that would be applicable in a wilderness study area. Without an agreement to this effect, no action may be taken on the plan until a wilderness inventory is completed; or

(2) The area has been inventoried and a final decision has been issued and become effective that the area does not contain wilderness characteristics, and that the mining operations are no longer subject to these regulations; or

(3) The anticipated impacts are such that all or part of the proposed mining operations will impair the suitability of the area for preservation as wilderness, and therefore, the proposed mining operation cannot be allowed.

(d) In addition to paragraphs (a) through (c) of this section, the following general plan approval procedures may also apply. The authorized officer may notify the operator, in writing, that:

(1) The plan of operations is unacceptable and the reasons therefore; or

(2) Modification of the plan of operations is necessary to meet the requirements of these regulations;

(3) The plan of operations is being reviewed, but that more time, not to exceed an additional 60 days, is necessary to complete such review, setting forth the reasons why additional time is needed except in those instances where it is determined that an Environmental Impact Statement, compliance with section 106 of the National Historic Preservation Act (NHPA) or section 7 of the Endangered Species Act is needed. Periods during which the area of operations is inaccessible for inspection due to climatic conditions, fire hazards or other physical conditions or legal impediments, shall not be included when counting the 60 calendar day period; or

(4) The proposed operations do not require a plan of operations.

(e) If the authorized officer does not notify the operator of any action on the plan of operations within the 30-day period, or the 60-day extension, or notify the operator of the need for an Environmental Impact Statement or compliance with section 106 of NHPA or section 7 of the Endangered Species Act, operations under the plan may begin. The option to begin operations under this section does not constitute approval of a plan of operations. However, if the authorized officer at a later date finds that operations under the plan are impairing wilderness suitability, the authorized officer shall notify the operator that the operations are not in compliance with these regulations and what changes are needed, and shall require the operator to submit a modified plan of operations, within a time specified in the notice. If the operator is notified of the need for an Environmental Impact Statement, the plan of operations shall not be approved before 30 days after a final statement is prepared and filed with the Environmental Protection Agency. If the is operator notified of the need for compliance with section 106 of the NHPA or section 7 of the Endangered Species Act, the plan of operations shall not be approved until the compliance responsibilities of the Bureau of Land Management are satisfied.

(f) If cultural resource properties listed on or eligible for listing on the National Register of Historic Places are within the area of operations, no operations which would affect those resources shall be approved until compliance with section 106 of the National Historic Preservation Act is accomplished. The operator is not required to do or to pay for an inventory. The responsibility and cost of the cultural resource mitigation, except as provided in § 3802.3–2(f) of this title, included in an approved plan of operation shall be the operator's.

(g) Pending final approval of the plan of operations, the authorized officer may approve any operations that may be necessary for timely compliance with requirements of Federal and State laws. Such operations shall be conducted so as to prevent impairment of wilderness suitability and to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in § 3802.3 of this title.

§ 3802.1–6 Modification of plan.

(a) If the development of a plan for an entire operation is not possible, the operator shall file an initial plan setting forth this proposed operation to the degree reasonably foreseeable at that time. Thereafter, the operator shall file a supplemental plan or plans prior to undertaking any operations not covered by the initial plan.

(b) At any time during operations under an approved plan of operations, the authorized officer or the operator may initiate a modification of the plan detailing any necessary changes that were unforeseen at the time of filing of the plan of operations. If the operator does not furnish a proposed modification within a time considered reasonable by the authorized officer, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the supporting facts and reasons for his recommendations. In acting upon such recommendation, except in the case of a modification under § 3802.1–5(e) of this title, the State Director shall determine (1) whether all reasonable measures were taken by the authorized officer to predict the environmental impacts of the proposed operations; (2) whether the disturbance is or may become of such significance as to require modification of the plan of operations in order to meet the requirement for environmental protection specified in § 3802.3–2 of this title, and (3) whether the disturbance can be minimized using reasonable means. Lacking such a determination by the State Director, an operator is not required to submit a proposed modification of an approved plan of operations. Operations may continue in accordance with the approved plan of operations until a modified plan is approved, unless the State Director determines that the operations are causing impairment or unnecessary or undue degradation to surface resources. He shall advise the operator of those measures needed to avoid such damage and the operator shall immediately take all necessary steps to implement measures recommended by the State Director.

(c) A supplemental plan of operations or a modification of an approved plan of operations shall be approved by the authorized officer in the same manner as the initial plan of operations.

§ 3802.1–7 Existing operations.

(a) Persons conducting mining operations on the effective date of these regulations, who would be required to submit a plan of operations under § 3802.1–1 of this title, may continue operations but shall, within 60 days after the effective date of these regulations, submit a plan of operations. Upon a showing of good cause, the authorized officer shall grant an extension of time to submit a plan of operations not to exceed an additional 180 days.

(b) Operations may continue according to the submitted plan of operations during its review unless the operator is notified otherwise by the authorized officer.

(c) Upon approval of a plan of operations, mining operations shall be conducted in accordance with the approved plan.

§ 3802.2 Bond requirements.

(a) Any operator who conducts mining operations under an approved plan of operations shall, if required to do so by the authorized officer, furnish a bond in

an amount determined by the authorized officer. The authorized officer may determine not to require a bond where mining operations would cause nominal environmental damage, or the operator has an excellent past record for reclamation. In determining the amount of the bond, the authorized officer shall consider the estimated cost of stabilizing and reclaiming all areas disturbed by the operations consistent with § 3802.3–2(h) of this title.

(b) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a face and market value at the time of deposit of not less than the required dollar amount of the bond.

(c) In place of the individual bond on each separate operation, a blanket bond covering hardrock mining operations may be furnished, at the option of the operator, if the terms and conditions as determined by the authorized officer are sufficient to comply with these regulations.

(d) In the event that an approved plan of operations is modified in accordance with § 3802.1–5 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, shall require that the amount of bond be adjusted to conform to the plan of operations, as modified.

(e) When a mining claim is patented, except for the California Desert Conservation Area, the authorized officer shall release the operator from that portion of the performance bond and plan of operations which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond and plan of operations (covering approved means of access outside the boundaries of the mining claim) when the operator has either completed reclamation in accordance with paragraph (f) of this section or those requirements are waived by the authorized officer.

(f) When all or any portion of the reclamation has been completed in accordance with paragraph (h) of § 3802.3–2 of this title, the operator shall notify the authorized officer who shall promptly make a joint inspection with the operator. The authorized officer shall then notify the operator whether the performance under the plan of operations is accepted. When the authorized officer has accepted as completed any portion of the reclamation, he shall reduce proportionally the amount of bond with respect to the remaining reclamation.

§ 3802.3 Environmental protection.

§ 3802.3–1 Environmental assessment.

(a) When a plan of operations or significant modification is filed, the authorized officer shall make an environmental assessment to identify the impacts of the proposed mining operations upon the environment and to determine whether the proposed activity will impair the suitability of the area for preservation as wilderness or cause unnecessary and undue degradation and whether an environmental impact statement is required.

(b) Following completion of the environmental assessment or the environmental impact statement, the authorized officer shall develop measures deemed necessary for inclusion in the plan of operations that will prevent impairment of wilderness suitability and undue or unnecessary degradation of land and resources.

(c) If as a result of the environment assessment, the authorized officer determines that there is substantial public interest in the proposed mining operations, the operator may be notified that an additional period of time is required to consider public comments. The period shall not exceed the additional 60 days provided for approval of a plan in § 3802.1–4 of this title except as provided for cases requiring an environmental impact statement, a cultural resource inventory or section 7 of the Endangered Species Act.

§ 3802.3–2 Requirements for environmental protection.

(a) *Air Quality.* The operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act (42 U.S.C. 1857 et seq.).

(b) *Water Quality.* The operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.).

(c) *Solid Wastes.* The operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste shall either be removed from the affected lands or disposed or treated to minimize, so far as is practicable, its impact on the environment and the surface resources. All tailings, waste rock, trash, deleterious materials of substances and other waste produced by operations shall be deployed, arranged, disposed or treated to minimize adverse impact upon the environment, surface and subsurface resources.

(d) *Visual Resources.* The operator shall, to the extent practicable, harmonize operations with the visual resources, identified by the authorized officer, through such measures as the design, location of operating facilities and improvements to blend with the landscape.

(e) *Fisheries, Wildlife and Plant Habitat.* The operator shall take such action as may be needed to minimize or prevent adverse impact upon plants, fish, and wildlife, including threatened or endangered species, and their habitat which may be affected by the operations.

(f) *Cultural and Paleontological Resources.* (1) The operator shall not knowingly disturb, alter, injure, destroy or take any scientifically important paleontological remains or any historical, archaeological, or cultural district, site, structure, building or object.

(2) The operator shall immediately bring to the attention of the authorized officer any such cultural and/or paleontological resources that might be altered or destroyed by his operation, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his attention, and determine within 10 working days what action shall be taken with respect to such discoveries.

(3) The responsibility and the cost of investigations and salvage of such values discovered during approved operations shall be the Federal Goverment's.

(g) *Access Routes.* No new access routes that would cause more than temporary impact and therefore would impair wilderness suitability shall be constructed in a wilderness study area. Temporary access routes that are constructed by the operator shall be constructed and maintained to assure adequate drainage and to control or prevent damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations shall be closed to normal vehicular traffic; bridges and culverts shall be removed; cross drains, dips, or water bars shall be constructed, and the road surface shall be shaped to as near a natural contour as practicable, be stablized and revegetated as required in the plan of operations.

(h) *Reclamation.* (1) The operator shall perform reclamation of those lands disturbed or affected by the mining operation conducted by the operator under an approved plan of operations

containing reclamation measures stipulated by the authorized officer as contemporaneously as feasible with operations. The disturbance or effect on mined land shall not include that caused by separate operations in areas abandoned before the effective date of these regulations.

(2) An operator may propose and submit with his plan of operations measures for reclamation of the affected area.

(i) *Protection of survey monuments.* The operator shall, to the extent practicable and consistent with the operation, protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against destruction, obliteration, or damage from the approved operations. If, in the course of operations, any monuments, corners or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe in writing the requirement for the restoration or reestablishment of monuments, corners, bearing trees, and line trees.

§ 3802.4 General provisions.

§ 3802.4-1 Noncompliance.

(a) An operator who conducts mining operations undertaken either without an approved plan of operations or without taking actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(b) Whenever the authorized officer determines that an operator is failing or has failed to comply with the requirements of an approved plan of operations, or with the provisions of these regulations and that noncompliance is causing impairment of wilderness suitability or unnecessary and undue degradation of the resources of the lands involved, the authorized officer shall serve a notice of noncompliance upon the operator by delivery in person to the operator or the operator's authorized agent, or by certified mail addressed to the operator's last known address.

(c) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of the plan of operations of the provisions of applicable regulations, and shall specify the actions which are in violation of the plan or regulations and the actions which shall be taken to correct the noncompliance and the time limits, not to exceed 30 days, within which corrective action shall be taken.

§ 3802.4-2 Access.

(a) An operator is entitled to non-exclusive access to his mining operations consistent with provisions of the United States mining laws and Departmental regulations.

(b) In approving access as part of a plan of operations, the authorized officer shall specify the location of the access route, the design, construction, operation and maintenance standards, means of transportation, and other conditions necessary to prevent impairment of wilderness suitability, protect the environment, the public health or safety, Federal property and economic interests, and the interests of other lawful users of adjacent lands or lands traversed by the access route. The authorized officer may also require the operator to utilize existing access routes in order to minimize the number of separate rights-of-way, and, if practicable, to construct access routes within a designated transportation and utility corridor. When commercial hauling is involved and the use of an existing access route is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

§ 3802.4-3 Multiple-use conflicts.

In the event that uses under any lease, license, permit, or other authorization pursuant to the provisions of any other law, shall conflict, interfere with, or endanger operations in approved plans or otherwise authorized by these regulations, the conflicts shall be reconciled, as much as practicable, by the authorized officer.

§ 3802.4-4 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires on the area of mining operations.

§ 3802.4-5 Maintenance and public safety.

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to protect the public in accordance with applicable Federal and State laws and regulations.

§ 3802.4-6 Inspection.

The authorized officer shall periodically inspect operations to determine if the operator is complying with these regulations and the approved

plan of operations, and the operator shall permit access to the authorized officer for this purpose.

§ 3802.4–7 Notice of suspension of operations.

(a) Except for seasonal suspension, the operator shall notify the authorized officer of any suspension of operations within 30 days after such suspension. This notice shall include:

(1) Verification of intent to maintain structures, equipment, and other facilities, and

(2) The expected reopening date.

(b) The operator shall maintain the operating site, structure, and other facilities in a safe and environmentally acceptable condition during nonoperating periods.

(c) The name and address of the operator shall be clearly posted and maintained in a prominent place at the entrance to the area of mining operations during periods of nonoperation.

§ 3802.4–8 Cessation of operations.

The operator shall, within 1 year following cessation of operations, remove all structures, equipment, and other facilities and reclaim the site of operations, unless variances are agreed to in writing by the authorized officer. Additional time may be granted by the authorized officer upon a show of good cause by the operator.

§ 3802.5 Appeals.

(a) Any party adversely affected by a decision of the authorized officer or the State Director made pursuant to the provisions of this subpart shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title.

(b) In any case involving lands under the jurisdiction of any agency other than the Department of the Interior, or an office of the Department of the Interior other than the Bureau of Land Management, the office rendering a decision shall designate the authorized officer of such agency as an adverse party on whom a copy of any notice of appeal and any statement of reasons, written arguments, or brief must be served.

§ 3802.6 Public availability of information.

(a) Except as provided herein, all information and data, including plans of operation, submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act (F.O.I.A.).

(b) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information and so determined by the authorized officer will not be available for public examination.

(c) The determination concerning specific information which may be withheld from public examination will be made in accordance with the rules in 43 CFR Part 2.

James W. Curlin,

Acting Assistant Secretary of the Interior.

February 27, 1980.

[FR Doc. 80–6501 Filed 2–29–80; 8:45 am]

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43 CFR Part 1820

[Circular No. 2458]

Execution and Filing of Forms; Office Hours

Under the authority of section 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740), Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Section 1821.2–1 is amended to read as follows:

PART 1820—APPLICATION PROCEDURES

§ 1821.2–1 Office hours; place for filing.

(a) The offices listed in paragraph (d) of this section are open to the public for the filing of applications and other documents and inspection of records on Monday through Friday during the regular business hours of each office, with the exception of those days when the office may be closed because of a national holiday or by Presidential or other administrative order.

James W. Curlin,
Acting Assistant Secretary of the Interior
March 24, 1980.

[FR Doc. 80-9426 Filed 3-27-80; 8:45 am]

Published in 45 F.R. 20476 March 28, 1980 - Effective March 26, 1980.

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GPO 855 - 823

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 7

[Circular No. 2459]

Employees: Interest in Lands and Resources; Exceptions: Acquisition

Under the authority of the Act of December 15, 1971, as amended (16 U.S.C. 1331 et seq.), commonly referred to as the Wild Free-Roaming Horse and Burro Act, Part 7, Subtitle A of Title 43 of the Code of Federal Regulations, is amended as set forth below.

1. Section 7.4(a)(4) is amended to read as follows:

§ 7.4 Exceptions.

(a) * * *

(4) An employee of the Department of the Interior or any member of an employee's family may acquire a wild free-roaming horse or burro for maintenance or adoption through a cooperative agreement as required in 43 CFR 4740.4–2 or 43 CFR 4750.2 and may gain title to the animal(s) under the provisions of 43 CFR 4740.5.

Guy R. Martin,
Assistant Secretary of the Interior.
April 4, 1980.

[FR Doc. 80–10915 Filed 4–9–80; 8:45 am]

Published in 45 F.R. 24471 April 10, 1980 - Effective May 14, 1980

Circular Distribution List

GPO 855 - 931

[4310-84]

CHAPTER II - BUREAU OF LAND MANAGEMENT

DEPARTMENT OF THE INTERIOR

[Circular No. ~~2~~] 2461

SUBCHAPTER C - MINERALS MANAGEMENT (3000)

43 CFR Part 3100

Oil and Gas Lease Assignments, Transfers and Subleases

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency final rulemaking.

SUMMARY: By Order No. 3049, dated February 29, 1980, the Secretary of the Interior suspended all noncompetitive oil and gas leasing in response to information resulting from an investigation which indicated criminal activities in noncompetitive leasing so widespread as to threaten the validity of lease offers and the integrity of the leasing system. The Secretary on the same date established a working group under direction of the Bureau of Land Management to review all aspects of the noncompetitive leasing system and alleged abuses of the program and to report to him on recommendations for steps to be taken which would permit resumption of leasing free of fraud and abuse. After reviewing the work group's report and considering other points of view, the Secretary revoked the suspension by Order No. 3051, dated April 7, 1980, and directed resumption of leasing upon institution of modifications in the noncompetitive oil and gas leasing systems on June 16, 1980. This final rulemaking amends 43 CFR 3106.2-2(a)

with respect to one such modification, specifically, new procedures for obtaining approval of assignments and transfers of record title interests in oil and gas leases.

These procedures provide greater control over lessees transferring and assignees acquiring interests in Federal leases by requiring the use of a prenumbered assignment form. Each prenumbered form will be designated by the Bureau of Land Management for use in assigning a record title interest in a particular lease. Each prenumbered form may be used to assign only that lease designated on the assignment form by the Bureau. This rulemaking restricts the availability of assignment forms for both competitive and noncompetitive leases.

These changes are designed to preclude the practice of using forms presigned by an offeror/assignor in circumvention of the regulations and the law because they do not disclose the true party in interest in the offer when first filed.

EFFECTIVE DATE: _____, 1980.

ADDRESS: Suggestions and inquiries should be sent to:

Director (530)
Bureau of Land Management
1800 C Street, N. W.
Washington, D. C. 20240

FOR FURTHER INFORMATION CONTACT:

Charles Weller
202 343-7753

SUPPLEMENTARY INFORMATION: This change in the existing procedures for the assignment of an interest in an oil and gas lease is designed to strengthen the control of the Department of the Interior over persons selling or seeking to acquire interests in Federal oil and gas leases. The change will prevent a particular abuse uncovered by an ongoing, Bureau-wide investigation of fraud in the leasing system. The perpetrator of this type of fraud induces people to sign blank lease offers and assignment forms. The lease offer is then filed in the name of the purported applicant, while fraudulently concealing the identity and interest of the perpetrator in the offer from the Government. Should one of these fraudulently filed lease offers result in a lease, the perpetrator then uses one of the presigned assignment forms to obtain or transfer actual ownership of the lease. This scheme allows the perpetrator to violate, without detection, the Federal acreage limitation and also to multiple-file in the simultaneous oil and gas lease drawings.

All future assignments of record title interests in Federal oil and gas leases must be filed on a prenumbered assignment form which has been designated by the Bureau of Land Management for use in assigning a particular lease. The form may be used to assign only that lease to which it is designated. The availability of assignment forms is also restricted. Forms to assign leases issued under the simultaneous oil and gas leasing system shall be available only upon lease issuance or

60 days after priority of applications is established by drawing, whichever is sooner. Forms to assign leases issued under the over-the-counter leasing system shall be available upon lease issuance or 60 days after the filing of the offer to lease, whichever is sooner. Forms to assign leases issued under the competitive leasing system shall be available after the Bureau of Land Management assigns a serial number to the competitive bid.

In total, the changes will have the effect of making assignment forms unavailable prior to the filing of a lease offer, thereby addressing directly a fraudulent practice found to be pervasive in the current investigation, and rendering unusable any presigned forms which may currently be in existence. The additional restriction on the availability of forms to assign over-the-counter and simultaneous oil and gas leases recognizes that these leasing programs, as opposed to competitive leasing, attract many applicants with no experience in oil and gas leasing. By establishing a "cooling-off" period during which no assignment forms are available, we provide an opportunity for all interested parties to contact the applicant and thereby reduce the chance that the applicant will be victimized or made an unwilling participant in a fraudulent leasing arrangement. The Bureau of Land Management shall also use the period to further inform the applicant of the statutory and regulatory requirements relating to leasing and assigning.

Option A-6 of the March 24, 1980, report of the Bureau of Land Management working group, which was subscribed to by the Secretary of the Interior in his decision of April 7, 1980, would have restricted the availability of forms until after a lease is issued. Upon further consideration of the factors necessary to prevent fraud while minimizing the impact on industry practice, a modification of the previous decision was adopted with the Secretary's approval. The modifications are contained in this emergency rulemaking.

Assignment forms are available from the Bureau of Land Management office with jurisdiction over the lease being assigned. Requests for assignment forms may be made in person, in writing or by telephone. The specific lease being assigned must be identified in any request for a form.

Because of the alleged widespread criminal activities in the noncompetitive leasing system and the need to make immediate changes in the regulations governing that program so that greater control can be exercised over all phases of the noncompetitive leasing program, this rulemaking is being made final upon its publication. The immediate change will prevent further circumvention of the existing regulations and the law by those who would continue the use of allegedly illegal methods for their benefit and to the detriment of the noncompetitive leasing program and honest participants in it.

The principal author of this rulemaking is Doris Koivula of the Division of Onshore Energy Minerals, Bureau of Land Management.

It is hereby determined that publication of this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.C.C. 4332(2)(C) is required.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under authority of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), Part 3100, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

Assistant Secretary of the Interior

MAY 1 1980

1. Section 3106.2-2(a) is amended to read as follows:

PART 3100 - OIL AND GAS LEASING

§ 3106.2-2 Forms.

(a) Record title; copies required. An assignment of a record title interest shall be filed in triplicate in the proper Bureau of Land Management Office.

(1) Official form. A form approved by the Director shall be used. Three copies of the form, each of which has been prenumbered and designated by the Bureau of Land Management for use in assigning a record title interest in a particular lease, shall be furnished upon request. Each form shall be used to assign only the designated lease. No reproductions of the offical form shall be accepted for filing. The signature of the authorized officer on the official form shall constitute approval of the assignment.

(2) Separate instruments required. Each of the three copies of the assignment form shall be signed holographically (manually) in ink and shall be filed for each lease or for each transfer of all or a part of the leased acreage or of a divided or an undivided interest in the record title in such lease. When transfers to the same person, association or corporation involving more than one lease are filed at the same time for approval, one showing as to qualifications of the assignee, if not previously furnished, shall suffice.

(3) When forms may be obtained. Forms for the assignment of leases issued under subpart 3112 of this title will be available upon lease issuance or 60 days after priority of applications is established by drawing, whichever comes first. Forms for the assignment of leases issued under subpart 3111 of this title will be available upon lease issuance or 60 days after the filing of an offer to lease, whichever occurs first. Forms for the assignment of competitive leases shall be available upon the designation of a serial number to competitive bids by the Bureau of Land Management.

(4) Where forms may be obtained. The official form may be obtained only from the Bureau of Land Management office have jurisdiction over the lease to be assigned. The serial number of the particular lease to be assigned shall be identified in any request for a form.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[Circular No. 2461]

Oil and Gas Lease Assignments, Transfers and Subleases

Under authority of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), Part 3100, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Section 3106.2–2 is amended by revising the caption and paragraph (a) to read as follows:

PART 3100—OIL AND GAS LEASING

§ 3106.2-2 Forms.

(a) *Record title; copies required.* An assignment of a record title interest shall be filed in triplicate in the proper Bureau of Land Management Office.

(1) *Official form.* A form approved by the Director shall be used. Three copies of the form, each of which has been prenumbered and designated by the Bureau of Land Management for use in assigning a record title interest in a particular lease, shall be furnished upon request. Each form shall be used to assign only the designated lease. No reproductions of the official form shall be accepted for filing. The signature of the authorized officer on the official form shall constitute approval of the assignment.

(2) *Separate instruments required.* Each of the three copies of the assignment form shall be signed holographically (manually) in ink and shall be filed for each lease or for each transfer of all or a part of the leased acreage or of a divided or an undivided interest in the record title in such lease. When transfers to the same person, association or corporation involving more than one lease are filed at the same time for approval, one showing as to qualifications of the assignee, if not previously furnished, shall suffice.

(3) *When forms may be obtained.* Forms for the assignment of leases issued under Subpart 3112 of this title will be available upon lease issuance or 60 days after priority of applications is established by drawing, whichever comes first. Forms for the assignment of leases issued under Subpart 3111 of this title will be available upon lease issuance or 60 days after the filing of an offer to lease, whichever occurs first. Forms for the assignment of competitive leases shall be available upon the designation of serial number to competitive bids by the Bureau of Land Management.

(4) *Where forms may be obtained.* The official form may be obtained only from the Bureau of Land Management office have jurisdiction over the lease to be assigned. The serial number of the particular lease to be assigned shall be identified in any request for a form.

Guy R. Martin,
Assistant Secretary of the Interior.
May 1, 1980.

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Circular Distribution List

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 9260

[Circular No. 2462]

Public Lands and Resources; Law Enforcement—Criminal

Under the authority of section 303 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733) Group 9200, Subchapter I, Chapter II, Title 43 of the Code of Federal Regulations is amended by adding Part 9260 as set forth below.

PART 9260—LAW ENFORCEMENT—CRIMINAL

Subpart 9260—Law Enforcement, General

Sec.
9260.0–1 Purpose.
9260.0–2 Objectives.
9260.0–3 Authority.
9260.0–4 [Reserved]
9260.0–5 [Reserved]
9260.0–6 [Reserved]
9260.0–7 Penalties.
9260.0–8 [Reserved]
9260.0–9 [Reserved]

Subpart 9261—General Management [Reserved]

Subpart 9262—Land Resource Management [Reserved]

Subpart 9263—Minerals Management [Reserved]

Subpart 9264—Range Management

9264.0–3 Authority.
9264.1 Grazing Administration—Exclusive of Alaska.
9264.2 Grazing Administration—Alaska; Livestock [Reserved]
9264.3 Grazing Administration—Alaska; Reindeer [Reserved]
9264.7 Wild Free-Roaming Horse and Burro Protection, Management Control.

Subpart 9265—Timber Management

9265.0–3 Authority.
9265.4 Sales of Forest Products, General [Reserved]
9265.5 Non-sale Disposals, General

Subpart 9266—Wildlife Management

9266.0–3 Authority.
9266.4 Viable Coral Communities.

Subpart 9267—Water Management [Reserved]

Subpart 9268—Recreation Programs

9268.0–3 Authority.
9268.1 Cultural Resource Management [Reserved]
9268.2 Natural History Resource Management Procedures [Reserved]
9268.3 Recreation Management, Procedures.
9268.4 Visual Resource Management [Reserved]
9268.5 Wilderness Management [Reserved]
9268.6 Environmental Education and Protection [Reserved]

Subpart 9269—Technical Services

9269.0–3 Authority.
9269.3 Trespass.

Authority: 16 U.S.C. 433; 16 U.S.C. 460 *l*–6a; 16 U.S.C. 670 g-n; 16 U.S.C. 1241–1249; 16 U.S.C. 1331 et seq.; 18 U.S.C. 3401; 18 U.S.C. 1851–1853; 43 U.S.C. 315 et seq.; 43 U.S.C. 315(a); 43 U.S.C. 315(c); 43 U.S.C. 1061–1064; 43 U.S.C. 1334; 43 U.S.C. 1701 et seq.; 43 U.S.C. 1733.

Subpart 9260—Law Enforcement, General

§ 9260.0–1 Purpose.

This Part establishes a single regulatory section in Title 43 where the law enforcement provisions of all the various public land use regulations can be found.

§ 9260.0–2 Objective.

To provide in a single Part a compilation of all criminal violations relating to public lands that appear throughout Title 43 of the Code of Federal Regulations.

§ 9260.0–3 Authority.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733), the Secretary of the Interior is authorized to issue regulations with respect to the management, use, and protection of the public lands, including property located thereon, the violation of which is punishable as a criminal offense. Section 303(c) of the Act authorizes the Secretary to enter into contracts with appropriate local officials having law enforcement authority and to authorize Federal personnel to carry out the enforcement of Federal laws and regulations relating to the public lands and their resources. Section 303(d) of the Act authorizes the Secretary to enter into cooperative agreements with State and local regulatory and law enforcement officials for the enforcement of State laws and local ordinances on the public lands. In addition to general authority under FLPMA, other specific authorities are noted where applicable.

§ 9260.0–4 [Reserved]

§ 9260.0–5 [Reserved]

§ 9260.0–6 [Reserved]

§ 9260.0–7 Penalties.

Any person violating any provision of Part 9260 of this title shall be subject to the specific penalties as noted under this Part.

§ 9260.0–8 [Reserved]

§ 9260.0–9 [Reserved]

Subpart 9261—General Management [Reserved]

Subpart 9262—Land Resource Management [Reserved]

Subpart 9263—Minerals Management [Reserved]

Subpart 9264—Range Management

§ 9264.0–3 Authority.

(a) The provisions of this subpart are issued under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and section 2 of the Taylor Grazing Act of 1934 (43 U.S.C. 315 et seq.).

(b) The provisions of § 9264.7 of this title are issued under section 8 of the Wild Free-Roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.).

§ 9264.1 Grazing Administration—Exclusive of Alaska.

Persons performing the following prohibited acts on public and other lands under Bureau of Land Management control may be subject to criminal penalties under § 9264.1 (1) of this title:

(a) Allowing livestock on or driving livestock across these lands without a permit or lease or in violation of the terms and conditions of a permit or lease, either by exceeding the number of livestock authorized, or by allowing livestock to be on these lands in an area or at a time different from that designated;

(b) Installing, using, maintaining, modifying, and/or removing range improvements without authorization;

(c) Cutting, burning, spraying, destroying, or removing vegetation without authorization;

(d) Damaging or removing United States property without authorization;

(e) Molesting livestock authorized to graze on these lands;

(f) Littering;

(g) Violating any provision of 43 CFR Part 4700 concerning the protection and management of wild free-roaming horses and burros;

(h) Violating any Federal or State laws or regulations concerning conservation or protection of natural and cultural resources or the environment including, but not limited to, those relating to air and water

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Circular Distribution List

quality, protection of fish and wildlife, plants, and the use of chemical toxicants;

(i) Interfering with lawful uses or users;

(j) Knowingly or willfully making a false statement or representation in base property certification, grazing applications, and/or amendments thereto;

(k) Allowing privately owned or controlled indigenous animals on or driving them across these lands without a permit or lease or in violation of the terms and conditions of a permit or lease, either by exceeding the number of animals authorized, or by allowing indigenous animals to be on these lands in an area or at a time different from that designated.

(43 CFR 4140.1(b))

(*l*) Penalties.

(1) Under section 2 of the Taylor Grazing Act of 1934 (43 U.S.C. 315 et seq.), any person who willfully violates the provisions of § 9264.1 of this title or of approved special rules and regulations is punishable by a fine of not more than $500.

(43 CFR 4170.2–1)

(2) Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), any person who knowingly and willfully violates the provisions of § 9264.1 of this title or of approved special rules and regulations may be brought before a designated United States magistrate and is punishable by a fine of not more than $1,000 or imprisonment for no more than 12 months, or both.

(43 CFR 4170.2–2)

§ 9264.2 Grazing Administration; Alaska; Livestock [Reserved]

§ 9264.3 Grazing Administration; Alaska; Reindeer [Reserved]

§ 9264.7 Wild Free-Roaming Horse and Burro Protection, Management, and Control.

(a) *Prohibited Acts.* In accordance with section 8 of the Wild Free-Roaming Horse and Burro Act (16 U.S.C. 1338), any person who:

(1) Willfully removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the authorized officer, or

(2) Converts a wild free-roaming horse or burro to private use, without authority from the authorized officer, or

(3) Maliciously causes the death or harassment of any wild free-roaming horse or burro, or

(4) Processes, or permits to be processed, into commercial products the remains of a wild free-roaming horse or burro, or

(5) Sells, directly or indirectly, a wild free-roaming horse or burro, or the remains thereof, which have not lost their status as a wild free-roaming horse of burro, or

(6) Uses a wild free-roaming horse or burro for commercial exploitation, or

(7) Causes or is responsible for the inhumane treatment of a wild free-roaming horse or burro, or

(8) Uses a wild free-roaming horse or burro for bucking stock, or

(9) Fails, upon written notice, to produce for inspection by an authorized officer those animals assigned to him for private maintenance under a cooperative agreement, or

(10) Fails to notify the authorized officer of the death of a wild free-roaming horse or burro within 7 days of death pursuant to § 4740.4–2(f) of this title, or

(11) Removes or attempts to remove, alters or destroys any official mark identifying a wild horse or burro, or its remains, or

(12) Being the assignee of a wild free-roaming horse or burro, or having charge or custody of the animal, abandons the animal without making arrangements for necessary food, water and shelter, or

(13) Being the assignee of a wild free-roaming horse or burro, or having charge or custody of the animal, fails to diligently pursue in an attempt to capture the escaped animal, or

(14) Accepts for slaughter or destruction a horse or burro bearing an official Bureau of Land Management identification mark, and which is not accompanied by a certificate that title to the animal has been transferred, or

(15) After acceptance of an animal for slaughter or destruction, fails to retain for one year the certificate of title to a horse or burro bearing an official Bureau of Land Management identification mark, or

(16) Willfully violates any provisions of the regulations under § 9264.7 of this title shall be subject to a fine of not more than $2,000 or imprisonment for not more than 1 year, or both. Any person so charged with such violation by the authorized officer may be tried and sentenced by a U.S. Commissioner or magistrate, designated for that purpose by the court by which he/she was appointed, in the same manner and subject to the same conditions as provided in section 3401, Title 18, U.S.C.

(43 CFR 4760.2; 18 U.S.C. 3401)

Subpart 9265—Timber Management

§ 9265.0–3 Authority.

The provisions of § 9265.5 of this title are issued under sections 1852 and 1853 of Title 18 of the United States Code unless otherwise specified.

§ 9265.4 Sales of Forest Products, General [Reserved]

§ 9265.5 Non-Sale Disposals, General

(a) *Free use of timber on mineral and non-mineral public lands.* Where permits are secured by fraud, or where timber is not taken or used in accordance with the terms of the law or §§ 5510.0–3(a) and 5511.1–1(a) to 5511.1–1(g) of this title, the Government may enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands. For criminal liability, see 18 U.S.C. 1852.

(43 CFR 5511.1–1(f)(3))

(b) *Free use of timber upon oil and gas leases.* Where permits are secured by fraud or timber is not used in accordance with § 5511.1–4 of this title, the Government will enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands.

(43 CFR 5511.1–4(e))

(c) *Unauthorized cutting of timber.* The cutting of timber from the public land in Alaska, other than in accordance with the terms of the law and §§ 5511.2–1 to 5511.2–6 of this title will render the persons responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally under Title 18, U.S. Code, or under State law.

(43 CFR 5511.2–5)

(d) *Penalties.* Sections 1852 and 1853 of Title 18, United States Code, provide:

(1) *Timber removed or transported.* (i) Whoever cuts, or wantonly destroys any timber growing on the public lands of the United States; or

(ii) Whoever removes any timber from said public lands, with intent to export or to dispose of the same; or

(iii) Whoever, being the owner, master, pilot, operator, or consignee of any vessel, motor vehicle, or aircraft or the owner, director, or agent of any railroad, knowingly transports any timber so cut or removed from said lands, or lumber manufactured therefrom, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States; nor shall it interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands.

(18 U.S.C. 1852)

(2) *Trees injured or cut.* Whoever unlawfully cuts, or wantonly injures or destroys any tree growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(18 U.S.C. 1853)

Subpart 9266—Wildlife Management

§ 9266.0-3 Authority.

The provisions of this subpart are issued under section 5 of the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1334).

§ 9266.4 Viable Coral Communities.

(a) *Requirement for a permit.* No person shall engage in any operation which directly causes damage or injury to a viable coral community that is located on the Outer Continental Shelf without having obtained a permit for said operations.

(43 CFR 6224.1-1)

(b) *Penalty.* Any person who knowingly and willingly violates the regulations of § 9266.4 of this title shall be guilty of a misdemeanor and punishable by a fine of not more than $2,000 or imprisonment for not more than 6 months or by both such fine and imprisonment. Each day of violation shall be deemed a separate offense.

(43 CFR 6224.5)

Subpart 9267—Water Management [Reserved]

Subpart 9268—Recreation Programs

§ 9268.0-3 Authority.

The provisions of this subpart are issued under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733), and other authorities where specifically noted.

(43 CFR 8340.0-3)

§ 9268.1 Cultural Resource Management [Reserved]

§ 9268.2 Natural History Resource Management Procedures [Reserved]

§ 9268.3 Recreation Management—Procedures.

(a) *Off-road vehicles, use of public lands*—(1) *Applicability.* The regulations in this subpart apply to all public lands, roads and trails under administration of the Bureau of Land Management.

(43 CFR 8340.0-8)

(2) *Conditions of use—regulations governing use.* (i) The operation of off-road vehicles is permitted on those areas and trails designated as open to off-road vehicle use.

(ii) Any person operating an off-road vehicle on those areas and trails designated as limited shall conform to all terms and conditions of the applicable designation orders.

(iii) The operation of off-road vehicles is prohibited on those areas and trails closed to off-road vehicle use.

(iv) It is prohibited to operate an off-road vehicle in violation of State laws and regulations relating to use, standards, registration, operation, and inspection of off-road vehicles. To the extent that State laws and regulations do not exist or are less stringent than the regulations in Part 8340 of this title, the regulations in this Part are minimum standards and are controlling.

(v) No person may operate an off-road vehicle on public lands without a valid State operator's license or learner's permit. Exceptions are:

(A) A person under the direct supervision of an individual 18 years of age or older who has a valid operator's license and who is responsible for the acts of the person supervised.

(B) A person certified by State government as competent to drive off-road vehicles after successfully completing a State approved operator's training program.

(C) Operation of an off-road vehicle in areas of Alaska designated by the Bureau's State Director for Alaska.

(vi) Any person supervising a nonlicensed driver shall be responsible for the operation of the vehicle and shall be responsible for the actions of the driver.

(vii) No person shall operate an off-road vehicle on public lands:

(A) In a reckless, careless, or negligent manner;

(B) In excess of established speed limits;

(C) While under the influence of alcohol, narcotics, or dangerous drugs;

(D) In a manner causing, or likely to cause significant, undue damage to or disturbance of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other authorized uses of the public lands; and

(E) During night hours, from a half-hour after sunset to a half-hour before sunrise, without lighted headlights and taillights.

(viii) Drivers of off-road vehicles shall yield the right-of-way to pedestrians, saddle horses, pack trains, and animal-drawn vehicles.

(ix) Any person who operates an off-road vehicle on public lands must comply with the regulations in Part 8340 and § 8341.2 of this title as applicable, while operating such vehicle on public lands.

(43 CFR 8341.1)

(3) *Vehicle operations—standards.* (i) No off-road vehicle may be operated on public lands unless equipped with brakes in good working condition.

(ii) No off-road vehicle equipped with a muffler cutout, bypass, or similar device, or producing excessive noise exceeding Environmental Protection Agency standards, when established, may be operated on public lands.

(iii) By posting appropriate signs or by marking a map which shall be available for public inspection at local Bureau offices, the authorized officer may indicate those public lands upon which no off-road vehicle may be operated unless equipped with a properly installed spark arrester. The spark arrester must meet either the U.S. Department of Agriculture—Forest Service Standard 5100-1a, or the 80 percent efficiency level standard when determined by the appropriate Society of Automotive Engineers (SAE) Recommended Practices J335 or J350. These standards include, among others, the requirements that:

(A) The spark arrester shall have an efficiency to retain or destroy at least 80 percent of carbon particles for all flow rates, and

(B) The spark arrester has been warranted by its manufacturer as meeting this efficiency requirement for at least 1,000 hours subject to normal use, with maintenance and mounting in accordance with the manufacturer's recommendation. A spark arrester is not required when an off-road vehicle is being operated in an area which has 3 or more inches of snow on the ground.

(iv) Vehicles operating during night hours, from a half-hour after sunset to a half-hour before sunrise, shall comply with the following:

(A) Headlights shall be of sufficient power to illuminate an object at 300 feet at night under normal, clear atmospheric conditions. Two- or three-wheeled vehicles or single-tracked vehicles will have a minimum of one headlight. Vehicles having four or more wheels or more than a single track will have a minimum of two headlights, except double tracked snowmachines with a maximum capacity of two people may have only one headlight.

(B) Red taillights, capable of being seen at a distance of 500 feet from the rear at night under normal, clear atmospheric conditions, are required on vehicles in the same numbers as headlights.

(43 CFR 8343.1)

(4) *Penalties.* Any person who violates or fails to comply with the regulations of § 9268.3 of this title is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more

than $1,000 or imprisonment for not longer than 12 months, or both.

(43 CFR 8340.0–7

(b) *Management areas.* [Reserved]

(c) *Operations—Rules of conduct*—(1) *Developed sites and areas.* The following rules are adopted to protect public property and to conserve the resources in developed recreation sites for public use and enjoyment. The user shall not:

(i) Intentionally or wantonly destroy, deface or remove any natural feature or plant;

(ii) Intentionally or wantonly destroy, injure, deface, remove, or disturb in any manner any public building, sign, equipment, marker, or other structure or property.

(43 CFR 8363.1–6)

(2) *Undeveloped sites and areas—prohibited activities.* In the use of lands for public outdoor recreation purposes, no one shall:

(i)intentionally or wantonly destroy, deface, injure, sign, remove or disturb any public building, sign, equipment, marker, or other public property;

(ii) Harvest or remove any vegetative or mineral resources or object of antiquity, historic, or scientific interest unless such removal is in accordance with Part 3 or § 8363.2–1 of this title, or is otherwise authorized by law;

(iii) Appropriate, mutilate, deface, or destroy any natural feature, object of natural beauty, antiquity, or other public or private property;

(iv) Dig, remove, or destroy any tree or shrub;

(v) Gather or collect renewable or nonrenewable resources for the purpose of sale or barter unless specifically permitted or authorized by law;

(vi) Drive or operate motorized vehicles or otherwise conduct himself in a manner that may result in unnecessary frightening or chasing of people or domestic livestock and wildlife;

(vii) Use motorized mechanical devices or explosives for digging, scraping, or trenching for purposes of collecting.

(43 CFR 8363.2–2)

(3) *Penalties.* Any person who knowingly and willfully violates any rule of conduct described in §§ 9268.3(c)(1) and (2) of this title shall be fined not more than $1,000 or imprisoned for not more than 12 months, or both.

(43 CFR 3, 16 U.S.C. 433; and 43 CFR 8363.5)

(d) *Operations—closures*—(1) *Closure of Lands.* In the management of lands to protect the public and assure proper resource utilization, conservation, and protection, public use and travel may be temporarily restricted. For instance, areas may be closed during period of high fire danger or unsafe conditions, or where use will interfere with or delay mineral development, timber and livestock operations, or other authorized use of the lands. Areas may also be closed temporarily to:

(i) Protect the public health and safety;

(ii) Prevent excessive erosion;

(iii) Prevent unnecessary destruction of plant life and wildlife habitat;

(iv) Protect the natural environment;

(v) Preserve areas having cultural or historical value; or

(vi) Protect scientific studies or preserve scientific values.

(43 CFR 8364.1)

(2) *Penalties.* Any person who knowingly and willfully violates any closure order issued under § 9268.3(c)(2) of this title shall be fined not more than $1,000 or imprisoned for not more than 12 months, or both.

(43 CFR 8364.2)

(e) *Use authorization*—(1) *Rules for visitor uses, other than on developed recreation sites—enforcement.* Failure to pay any fee or failure to obtain a permit required by Subpart 8372 of this title or operating with a suspended permit shall be punishable pursuant to the Federal Land Policy and Management Act of 1976, the Land and Water Conservation Fund Act, as amended, the Wild and Scenic Rivers Act, the National Trails Act, the Sikes Act, and other laws when applicable [see § 9268.3(e)(2)].

(43 CFR 8372.0–7)

(2) *Penalties.* (i) Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733) provides: any person who knowingly and willfully violates any such regulation which is lawfully issued under Title 18 of the United States Code shall be fined no more than $1,000 or imprisoned no more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of Title 18 of the United States Code.

(ii) Section 2, Land and Water Conservation Fund Act of 1964 (16 U.S.C. 460 *l*–6a), provides that any person violating the rules and regulations issued under Title 16 of the United States Code shall be punishable by a fine of not more than $100.

Any person so arrested may be tried and sentenced by any United States magistrate specifically designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in Title 18, United States Code, section 3401, subsection (b), (c), (d), and (e), as amended.

(iii) Section 204(a) of the Sikes Act of 1974 (16 U.S.C. 670g–n), provides that:

(A) Any person who hunts, traps, or fishes on any public land which is subject to a conservation and rehabilitation program implemented under this Act without having on his person a valid public land management area stamp, if the possession of such a stamp is required, shall be fined not more than $1,000, or imprisoned for not more than 6 months, or both.

(B) Any person who knowingly violates or fails to comply with any regulations prescribed under section 670h(c)(5) of Title 16 of the United States Code shall be fined not more than $500, or imprisoned not more than six months, or both.

(iv) Section 7 of the National Trails Act of 1968 (16 U.S.C. 1241–1249), provides: Any person who violates such regulations issued under Title 16 of the United States Code, and deemed necessary by the Secretary of the Interior, shall be guilty of a misdemeanor, and may be punished by a fine of not more than $500, or by imprisonment not exceeding 6 months, or by both such fine and imprisonment.

§ 9268.4 Visual Resource Management [Reserved]

§ 9268.5 Wilderness Management [Reserved]

§ 9268.6 Environmental Education and Protection [Reserved]

Subpart 9269—Technical Services

§ 9269.0–3 Authority.

(a) The provisions of this subpart are issued under the authority of R.S. 2478; 43 U.S.C. 1201.

(b) In addition to liability for trespass on the public lands, as indicated in Parts 9230 and 9260 of this title, persons responsible for such trespass may be prosecuted criminally under any applicable Federal law. Penalties are prescribed by the following statutes:

(1) Timber trespass. 18 U.S.C. 1852, 1953.

(2) Turpentine trespass. 18 U.S.C. 1854.

(3) Coal trespass. 18 U.S.C. 1851, 30 U.S.C. 201(b)(4).

(43 CFR 9239.0–3)

§ 9269.3 Criminal Trespass.

§ 9269.3–1 General Management [Reserved]

§ 9269.3–2 Land Resource Management [Reserved]

§ 9269.3–3 Minerals Management

(a) *Oil and gas leasing.* [Reserved]

(b) *Geothermal resources leasing.* [Reserved]

(c) *Outer continental shelf leasing.* [Reserved]

(d) *Coal management*—(1) *Trespass.* Mining operations conducted prior to the effective date of a lease shall

constitute an act of trespass and be subject to penalties specified in § 9239.5 of this title.

(43 CFR 3430.7)

(2) *Penalty for unauthorized exploration for coal.* (i) Any person who willfully conducts coal exploration for commercial purposes without an exploration license issued under subpart 3410 of this title shall be subject to a fine of not more than $1,000 for each day of violation.

(ii) All data collected by said person on any Federal lands as a result of such violations shall immediately be made available to the Secretary, who shall make the data available to the public as soon as possible.

(iii) No penalty under this section may be assessed unless such person is given notice and opportunity for a hearing with respect to such violation pursuant to Part 4 of this title.

(43 CFR 9239.5–3(f))

(e) *Minerals other than oil, gas and coal.* [Reserved]

(f) *Minerals materials disposal.* [Reserved]

(g) *Multiple use mining.* [Reserved]

(h) *Mining claims under the general mining laws.* [Reserved]

§ 9269.3–4 Range Management.

(a) *Grazing administration—exclusive of Alaska—*(1) *Unlawful enclosures or occupancy.* Section 1 of the Act of February 25, 1885 (43 U.S.C. 1061), declares any enclosure of public lands made or maintained by any party, association, or corporation who "had no claim or color of title made or acquired in good faith, or an asserted right thereto, by or under claim, made in good faith with a view to entry thereof at the proper land office under the general laws of the United States at the time any such enclosure was or shall be made" to be unlawful and prohibits the maintenance or erection thereof. (See § 9269.3–4(a)(2) of this title.

(43 CFR 9239.2)

(2) *Penalties.* Under section 4 of the Act of February 25, 1885 (43 U.S.C. 1064), any person violating any of the provisions of this Act, whether as owner, part owner, or agent, or who shall aid, abet, counsel, advise, or assist in any violation hereof, shall be deemed guilty of a misdemeanor and fined a sum not exceeding $1,000, or be imprisoned not exceeding one year, or both, for each offense.

(b) *Grazing administration; Alaska; livestock.* (1) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of Part 9230 of this title or within an stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for forage consumed and for injury to Federal property, and may be subject to criminal prosecution for such unlawful acts. A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, of by allowing the livestock to be on Federal land in an area or at a time different from that designated in his lease shall be in default and shall be subject to the provisions of § 4220.7 (g) and (h) of this title.

(2) *Penalties.* Under section 2 of the Taylor Grazing Act, any person who willfully grazes livestock in such areas without such authority shall, upon conviction, be punished by a fine of not more than $500.

(43 CFR 9239.3(b))

(c) *Grazing administration; Alaska; reindeer.* (1) Any use of the Federal lands for reindeer grazing purposes, unless authorized by a valid permit issued in accordance with the regulations in Part 4300 of this title, is unlawful and is prohibited.

(43 CFR 9239.3(a)(1))

(2) *Penalties.* Any person who willfully violates any of the rules and regulations in Part 4300 of this title shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment for not more than one year, or by a fine of not more than $500.

(43 CFR 9239.3(a)(2))

(d) *Wild free-roaming horse and burro protection, management, and control.* [Reserved]

§ 9269.3–5 Timber Management.

(a) *Sales of forest products; general.* [Reserved]

(b) *Non-sale disposals; general—*(1) *Unauthorized cutting of timber-mineral and non-mineral lands.* (i) The cutting or removing of the timber referred to in §§ 5511.1 to 5511.1–4 of this title in any other manner than that authorized by such sections will be considered a trespass.

(ii) The cutting of timber for sale and speculation, or for use by others than the permittee, is strictly prohibited.

(iii) Where permits are secured by fraud or timber is not used in accordance with § 5511.1–4 of this title, the Government will enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands.

(43 CFR 9239.1–1)

(2) *Unauthorized cutting of timber—Alaska.* The cutting of the timber from the public land in Alaska, other than in accordance with the terms of the law and §§ 5511.2 to 5511.2–6 of this title shall render the persons responsible for trespass and such persons may be prosecuted criminally under Title 18, U.S. Code (see § 9265.5(d) of this title), or under State law.

(18 U.S.C. 1852 and 1853; 43 CFR 9239.1–2)

Guy R. Martin,

Assistant Secretary of the Interior.

May 7, 1980.

[FR Doc. 80–14585 Filed 5–9–80; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2610

[Circular No. 2463]

Carey Act Grants; Segregating and Patenting Public Lands

Under the authority of the Act of August 18, 1894, as amended (43 U.S.C. 641, et seq.), Group 2600, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is hereby amended by adding Part 2610 as set forth below.

PART 2610—CAREY ACT GRANTS

Subpart 2610—Carey Act Grants, General

Sec.
2610.0–2 Objectives.
2610.0–3 Authority.
2610.0–4 Responsibilities.
2610.0–5 Definitions.
2610.0–7 Background.
2610.0–8 Character of lands subject to application.
2610.1 Segregation of lands.

Subpart 2611—Segregation Under the Carey Act—Procedures

Sec.
2611.1 Applications.
2611.1–1 Application for determination of suitability and availability of land.
2611.1–2 Determination of suitability and availability of land.
2611.1–3 Application for grant contract.
2611.1–4 Approval of plan and contract.
2611.1–5 Priority of Carey Act applications.
2611.2 Period of segregation.
2611.3 Rights-of-way over other public lands.

Subpart 2612—Issuance of Patents

2612.1 Lists for patents.
2612.2 Publication of lists for patents.
2612.3 Issuance of patents.

Subpart 2613—Preference Right of Entry Upon Restoration

2613.0–3 Authority.
2613.1 Allowance of filing of applications.
2613.2 Applications.
2613.3 Allowance of preference right.

Authority: Sec. 4 of the Act of August 18, 1894 (28 Stat. 422), as amended (43 U.S.C. 641), known as the Carey Act.

Subpart 2610—Carey Act Grants, General

§ 2610.0–2 Objectives.

The objective of section 4 of the Act of August 18, 1894 (28 Stat. 422), as amended (43 U.S.C. 641 et seq.), known as the Carey Act, is to aid public land States in the reclamation of the desert lands therein, and the settlement, cultivation, and sale thereof in small tracts to actual settlers.

§ 2610.0–3 Authority.

(a) The Carey Act authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to grant and patent to States, in which there are desert lands, not to exceed 1,000,000 acres of such lands to each State, under the conditions specified in the act. The Secretary is authorized to contract and agree to grant and patent additional lands to certain States. After a State's application for a grant has been approved by the Secretary, the lands are segregated from the public domain for a period of from 3 to 15 years, the State undertaking within that time to cause the reclamation of the lands by irrigation. The lands, when reclaimed, are patented to the States or to actual settlers who are its assignees. If the lands are patented to the State, the State transfers title to the settler. Entries are limited to 160 acres to each actual settler.

(b) The Act of June 11, 1896 (29 Stat. 434; 43 U.S.C. 642), authorizes liens on the land for the cost of construction of the irrigation works, and permits the issuance of patents to States for particular tracts actually reclaimed without regard to settlement or cultivation.

(c) The Act of March 1, 1907 (34 Stat. 1056), extends the provisions of the Carey Act to the former Southern Ute Indian Reservation in Colorado.

(d) The Joint Resolution approved May 25, 1908 (35 Stat. 577), authorizes grants to the State of Idaho of an additional 1,000,000 acres.

(e) The Act of May 27, 1908 (35 Stat. 347; 43 U.S.C. 645), authorizes grants of an additional 1,000,000 acres to the State of Idaho and the State of Wyoming.

(f) The Act of February 24, 1909 (35 Stat. 644; 43 U.S.C. 647), extends the provisions of the Carey Act to the former Ute Indian Reservation in Colorado.

(g) The Act of February 16, 1911 (36 Stat. 913), extends the Carey Act to the former Fort Bridger Military Reservation in Wyoming.

(h) The Act of February 21, 1911 (36 Stat. 925; 43 U.S.C. 523–524), permits the sale of surplus water by the United States Bureau of Reclamation for use upon Carey Act lands.

(i) The Act of March 4, 1911 (36 Stat. 1417; 43 U.S.C. 645), authorizes grants to the State of Nevada of an additional 1,000,000 acres.

(j) The Joint Resolution of August 21, 1911 (37 Stat. 38; 43 U.S.C. 645), authorizes grants to the State of Colorado of an additional 1,000,000 acres.

§ 2610.0–4 Responsibilities.

(a) The authority of the Secretary of the Interior to approve the applications provided for in this Part, has been delegated to the Director of the Bureau of Land Management and redelegated to State Directors of the Bureau of Land Management.

(b) The grant contact must be signed by the Secretary of the Interior, or an officer authorized by him, and approved by the President.

§ 2610.0–5 Definitions.

As used in the regulations of this part:

(a) "Actual settler" means a person who establishes a primary residence on the land.

(b) "Cultivation" means tilling or otherwise preparing the land and keeping the ground in a state favorable for the growth of ordinary agricultural crops, and requires irrigation as an attendant act.

(c) "Desert lands" means unreclaimed lands which will not, without irrigation, produce any reasonably remunerative agricultural crop by usual means or methods of cultivation. This includes lands which will not, without irrigation, produce paying crops during a series of years, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. Lands which produce native grasses sufficient in quantity, if ungrazed by grazing animals, to make an ordinary crop of hay in usual seasons, are not desert lands. Lands which will produce an agricultural crop of any kind without irrigation in amount sufficient to make the cultivation reasonably remunerative are not desert. Lands containing sufficient moisture to produce a natural growth of trees are not to be classed as desert lands.

Published in 45 F.R. 34230 May 21, 1980 - Effective June 20, 1980.

Circular Distribution List

(d) "Economic feasibility" means the capability of an entry to provide an economic return to the settler sufficient to provide a viable farm enterprise and assure continued use of the land for farming purposes. Factors considered in determining feasibility may include the cost of developing or acquiring water, land reclamation costs, land treatment costs, the cost of construction or acquisition of a habitable residence, acquisition of farm equipment, fencing and other costs associated with a farm enterprise, such as water delivery, seed, planting, fertilization, harvest, etc.

(e) "Grant contract" means the contract between a State and the United States which sets the terms and conditions which the State or its assignees shall comply with before lands shall be patented.

(f) "Irrigation" means the application of water to the land for the purpose of growing crops.

(g) "Ordinary agricultural crops" means any agricultural product to which the land under consideration is generally adapted, and which would return a fair reward for the expense of producing them. Ordinary agricultural crops do not include forest products, but may include orchards and other plants which cannot be grown on the land without irrigation and from which a profitable crop may be harvested.

(h) "Reclamation" means the establishment of works for conducting water in adequate volume and quantity to the land so as to render it available for distribution when needed for irrigation and cultivation.

(i) "Segregation" means the action under the Act of August 19, 1894 (28 Stat. 422), as amended (43 U.S.C. 641), by which the lands are reserved from the public domain and closed to application or entry under the public land laws, including location under the mining laws.

(j) "Smallest legal subdivision" means a quarter quarter section (40 acres).

§ 2610.0–7 Background.

The Carey Act authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to grant and patent to States, in which there are desert lands, not exceeding 1 million acres of such lands to each State, as the State may cause to be reclaimed. The State shall also cause not less than 20 acres of each 160 acre tract to be cultivated by actual settlers. A number of amendments allowed additional acreages for certain States. Colorado, Nevada and Wyoming were allowed up to 2 million acres. Idaho was allowed up to 3 million acres.

§ 2610.0–8 Lands subject to application.

(a) The lands shall be unreclaimed desert lands capable of producing ordinary agricultural crops by irrigation.

(b) The lands shall be nonmineral, except that lands withdrawn, classified or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas or asphaltic minerals may be applied for subject to a reservation of such deposit, as explained in subchapter 2093 of this title.

(c) Lands embraced in mineral permits of leases, or in applications for such permits or leases, or classified, withdrawn or reported as valuable for any leasable mineral, or lying within the geologic structure of a field are subject to the provisions of §§ 2093.0–3 through 2093.0–7 of this title.

(d) A project or individual entry may consist of 2 or more noncontiguous parcels. However, noncontiguous lands should be in a pattern compact enough to be managed as an efficient, economic unit.

Subpart 2611—Segregation Under the Carey Act—Procedures

§ 2611.1 Applications.

§ 2611.1–1 Applications for determination of suitability and availability of lands.

The first step in obtaining segregation of lands for Carey act development shall be the filing of an application in the appropriate State office of the Bureau of Land Management requesting that the authorized officer make a determination regarding the suitability and availability of lands for a Carey Act Project. The application shall consist of a map of lands proposed to be reclaimed, containing sufficient detail to clearly show which lands are included in the Project, the mode of irrigation and the source of water. The map shall bear a certification by the State official authorized to file the application that the lands are applied for subject to the provisions of subpart 2093 of this title.

§ 2611.1–2 Determination of suitability and availability of lands.

The authorized officer shall evaluate the suitability and availability of the lands for agricultural development under the Carey Act utilizing the criteria and procedures in Part 2400 of this title.

§ 2611.1–3 Application for grant contract.

If it is determined that lands are suitable and available for agricultural development under the Carey Act, the State shall submit the following, in duplicate, to the appropriate Bureau of Land Management office (43 CFR 1821):

(a) A plan of development that includes:

(1) A report on the economic feasibility of the project and the availability of an adequate supply of water to thoroughly irrigate and reclaim the lands to raise ordinary agricultural crops.

(2) Procedures for avoiding or mitigating adverse environmental impacts and for rehabilitation of the lands if all or part of the project fails.

(3) A map in sufficient detail to show the proposed major irrigation works and the lands to be irrigated. Map material and dimensions shall be as prescribed by the authorized officer and shall be drawn to a scale not greater than 1,000 feet to 1 inch. The map shall connect canals, pipelines larger than 8 inches in diameter, reservoirs and other major facilities in relationship to public survey lines or corners, where present. The map shall show other data as needed to enable retracement of the proposed major irrigation works on the ground. The engineer who prepared the map shall certify that the system depicted therein is accurately and fully represented and that the system proposed is sufficient to fully reclaim the lands.

(4) Additional data concerning the specifics of the plan and its feasibility as required by the authorized officer.

(b) A grant contract in a form prescribed by the Director, Bureau of Land Management, in duplicate, signed by the authorized State official, shall also be filed. A carbon copy of the contract shall not be accepted. The person who signs the contract on behalf of the State shall furnish evidence of his/her authority to do so. The contract shall obligate the State to all terms and conditions of the Act and all specifications of the approved plan, and shall obligate the United States to issue patents to the State upon actual reclamation of the lands according to the plan or to settlers who are its assignees, as provided in subpart 2093 of this title.

§ 2611.1–4 Approval of plan and contract.

(a) After making a determination that the proposed project is economically feasible, that sufficient water can be furnished to thoroughly irrigate and reclaim the lands, that measures to avoid or mitigate adverse environmental impacts and to rehabilitate the lands if the project fails are adequate, and that State laws and regulations concerning the disposal of the lands to actual settlers are not contrary to the provisions and restrictions of the Act, the authorized officer may approve the plan. Before making this determination and approving the plan, the authorized officer may, in agreement with the State, modify the plan.

(b) Upon approval of the plan, the grant contract may be signed by the Secretary of the Interior, or an officer in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate. A notice that the contract has been signed and the lands are segregated shall be published in the Federal Register. As a condition to entering into the contract, the Secretary or his delegate may require additional terms and conditions. If such is done, the new contract form shall be returned to the State for signing.

(c) The contract is not final and binding until approved by the President.

(d) After the plan has been approved, and the contract signed and approved, the lands may be entered by the State and its agents for reclamation and for residency, if appropriate.

§ 2611.1–5 Priority of Carey Act applications.

Properly filed applications under § 2611.1–1. or § 2611.1–3 of this title shall have priority over any subsequently filed agricultural applications for lands within the project boundaries. However, the rejection of a Carey Act application will not preclude subsequent agricultural development under another authority.

§ 2611.1–5 Priority of Carey Act applications.

Properly filed applications under § 2611.1–1 or § 2611.1–3 of this title shall have priority over any subsequently filed agricultural applications for lands within the project boundaries. However, the rejection of a Carey Act application will not preclude subsequent agricultural development under another authority.

§ 2611.2 Period of segregation.

(a) The States are allowed 10 years from the date of the signing of the contract by the Secretary in which to cause the lands to be reclaimed. If the State fails in this, the State Director may, in his discretion, extend the period for up to 5 years, or may restore the lands to the public domain at the end of the 10 years or any extension thereof. If actual construction of the reclamation works has not been commenced within 3 years after the segregation of the land or within such further period not exceeding 3 years as may be allowed for that purpose by the State Director, the State Director may, in his discretion, restore the lands to the public domain.

(b) All applications for extensions of the period of segregation must be submitted to the State Director. Such applications will be entertained only upon the showing of circumstances which prevent compliance by the State with the requirements within the time allowed, which, in the judgment of the State Director, could not have been reasonably anticipated or guarded against, such as the distruction of irrigation works by storms, floods, or other unavoidable casualties, unforeseen structural or physical difficulties encountered in the operations, or errors in surveying and locating needed ditches, canals, or pipelines.

§ 2611.3 Rights-of-way over other public lands.

When the canals, ditches, pipelines, reservoirs or other facilities required by the plan of development will be located on public lands not applied for by the State under the Carey Act, an application for right-of-way over such lands under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.), shall be filed separately by the proposed constructor. Rights-of-way shall be approved simultaneously with the approval of the plan, but shall be conditioned on approval of the contract.

Subpart 2612—Issuance of Patents

§ 2612.1 Lists for patents.

When patents are desired for any lands that have been segregated, the State shall file in the BLM State Office a list of lands to be patented, with a certificate of the presiding officer of the State land board, or other officer of the State who may be charged with the duty of disposing of the lands which the State may obtain under the law, that the lands have been reclaimed according to the plan of development, so that a permanent supply of water has been made available for each tract in the list, sufficient to thoroughly reclaim each 160-acre tract for the raising of ordinary agricultural crops. If patents are to be issued directly to assignees, the list shall include their names, the particular lands each claims, and a certification by the State that each is an actual settler and has cultivated at least 20 acres of each 160-acre tract. If there are portions which cannot be reclaimed, the nature, extent, location, and area of such portions should be fully stated. If less than 5 acres of a smallest legal subdivision can be reclaimed and the subdivision is not essential for the reclamation, cultivation, or settlement of the lands; such legal subdivision must be relinquished, and shall be restored to the public domain as provided in a notice published in the Federal Register.

§ 2612.2 Publication of lists for patents.

(a) *Notice of lists.* When a list for patents is filed in the State Office, it shall be acompanied by a notice of the filing, in duplicate, prepared for the signature of the State Director, or his delegate, fully incorporating the list. The State shall cause this notice to be published once a week for 5 consecutive weeks, in a newspaper of established character and general circulation in the vicinity of the lands, to be designated by the State Director, as provided in Subpart 1824 of this chapter.

(b) *Proof of publication.* At the expiration of the period of publication, the State shall file in the State Office proof of publication and of payment for the same.

§ 2612.3 Issuance of patents.

Upon the receipt of proof of publication such action shall be taken in each case as the showing may require, and all tracts that are free from valid protest, and respecting which the law and regulations and grant contract have been complied with, shall be patented to the State, or to its assignees if the lands have been settled and cultivated. If patent issues to the State, it is the responsibility of the State to assure that the lands are cultivated and settled. If the State does not dispose of the patented lands within 5 years to actual settlers who have cultivated at least 20 acres of each 160 acre tract, or if the State disposes of the patented lands to any person who is not an actual settler or has not cultivated 20 acres of the 160 acre tract, action may be taken to revest title in the United States.

Subpart 2613—Preference Right Upon Restoration

§ 2613.0–3 Authority.

The Act approved February 14, 1920 (41 Stat. 407; 43 U.S.C. 644), provides that upon restoration of Carey Act lands from segregation, the Secretary is authorized, in his discretion, to allow a preference right of entry under other applicable land laws to any Carey Act entryman on any such lands which such person had entered under and pursuant to the State laws providing for the administration of the grant and upon which such person had established actual, bona fide residence or had made substantial and permanent improvements.

§ 2613.1 Allowance of filing of applications.

(a) *Status of lands under State laws.* Prior to the restoration of lands segregated under the Carey Act, the Bureau of Land Management shall ascertain from the proper State officials whether any entries have been allowed under the State Carey Act laws on any such lands, and if any such entries have been allowed, the status thereof and action taken by the State with reference thereto.

(b) *No entries under State laws.* If it is shown with reasonable certainty, either from the report of the State officers or by other available information, that there are no entries under State law, then the Act of February 14, 1920, shall not be considered applicable to the restoration of the lands. Lands shall be restored as provided in a notice published in the Federal Register.

(c) *Entries under State laws.* If it appears from the report of the State officials or otherwise that there are entries under the State law which may properly be the basis for preference rights under this act, in the order restoring the lands the authorized officer may, in his discretion, allow only the filing of applications to obtain a preference right under the Act of February 14, 1920.

§ 2613.2 Applications.

(a) Applications for preference rights under the Act of February 14, 1920, shall

be filed within 90 days of the publication of the restoration order.

(b) Applications shall be on a form approved by the Director and shall set forth sufficient facts to show that the applicant is qualified under the act and these regulations. The application must be subscribed and sworn to before a notary public.

(c) Persons qualified. The Act of February 14, 1920, applies only to cases of entries in good faith in compliance with the requirements of State law, with a view to reclaiming the land and procuring title pursuant to the provisions of the Carey Act; the act does not apply to cases where persons have settled on or improved the segregated land, either with the approval of the State authorities or otherwise, not pursuant to State law or not in anticipation of reclaiming the lands and procuring title under the Carey Act but in anticipation of initiating some kind of a claim to the land on its restoration because of failure of the project or cancellation of the segregation.

(d) Persons not qualified. The Act of February 14, 1920, does not apply to cases where the applicant's entry has been canceled by the State or forfeited for failure to perfect the entry according to State law, unless the failure is the result of conditions which culminated in the elimination of the lands from the project if the State has allowed a subsequent entry for the same lands, this shall be conclusive evidence that the default was the fault of the State entryman whose entry was forfeited or canceled.

§ 2613.3 Allowance of preference right.

If a person's application is approved, such person shall have 90 days to submit an application for entry under another land law, and shall be entitled to a preference right of entry under other law if and when the lands are determined to be suitable for entry under such law pursuant to the regulations found in Part 2400 of this chapter.

Guy R. Martin,
Assistant Secretary of the Interior.
May 15, 1980.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

[Circular No. 2464]

Amendment and Correction of Regulations Relating to Management of Oil and Natural Gas Pipelines and Related Facilities on Federal Lands and Reimbursement of Costs

Under the authority of section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Part 2880, Group 2800, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations, is amended and corrected as set forth below.

1. Section 2882.2–2(a) is amended by deleting "any State Office" and inserting in lieu thereof "the nearest Bureau of Land Management Office".

2. Section 2882.2–2(b) is amended by striking the period at the end of the first sentence and adding the following:
"or at the nearest Bureau of Land Management Office that has jurisdiction over a portion of the Federal lands involved."

3. Section 2882.2–3(a) is corrected by deleting "§ 2882.22–1" and inserting in lieu thereof "§ 2882.2–1".

4. Section 2882.2–4(e) is corrected by deleting "§ 2882.3–3" and inserting in lieu thereof "§ 2882.2–4(f)".

Guy R. Martin,
Assistant Secretary of the Interior.
May 20, 1980.

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Circular Distribution List

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

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Under the authority of section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Part 2880, Group 2800, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations, is amended and corrected as set forth below.

1. Section 2882.2–2(a) is amended by deleting "any State Office" and inserting in lieu thereof "the nearest Bureau of Land Management Office".

2. Section 2882.2–2(b) is amended by striking the period at the end of the first sentence and adding the following:
"or at the nearest Bureau of Land Management Office that has jurisdiction over a portion of the Federal lands involved."

3. Section 2882.2–3(a) is corrected by deleting "§ 2882.22–1" and inserting in lieu thereof "§ 2882.2–1".

4. Section 2882.2–4(e) is corrected by deleting "§ 2882.3–3" and inserting in lieu thereof "§ 2882.2–4(f)".

Guy R. Martin,
Assistant Secretary of the Interior.
May 20, 1980.

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Circular Distribution List

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[Circular No. 2465]

Simultaneous Oil and Gas Leasing System

Under the authority of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), and related laws, Part 3100, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3100—OIL AND GAS LEASING

1. Section 3100.0–5 is amended by revising paragraphs (b) and (d) to read as follows:

§ 3100.0–5 Definitions.

* * * * *

(b) "Sole party in interest" means a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to an application, offer or lease in which any other party has any of the interests described in this section. The requirements of disclosure in any application or offer of an applicant's or other parties' interest in a lease, if issued, reflect the policy that all applicants and other parties having an interest in simultaneously filed lease applications or offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means of maintaining adequate records of acreage holdings. An "interest" in the least includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the application or offer is filed, is deemed to constitute an "interest" in such lease.

* * * * *

(d) "Person or entity in the business of providing assistance to participants in a Federal oil and gas leasing program" means those offering services for consideration in connection with the acquisition of Federal oil and gas leases. Included in this definition are those enterprises, commonly known as filing services, which sign, formulate, prepare, offer advice on formulation or preparation, mail, deliver, receive mail or otherwise complete or file lease applications or offers for consideration. Excluded from the definition are those services which only tangentially relate to Federal oil and gas lease acquisition, such as general secretarial assistance, or general geologic advice which is not specifically related to Federal lease parcels or leasing.

2. Section 3100.5–3 is amended to read as follows:

§ 3100.5–3 Period of option.

Except as provided in § 3112.4–3 of this title, an option taken on a lease application or offer may be for a period of time until issuance of the lease and 3 years thereafter. Where options are sought for longer periods, an application shall be filed with the authorized officer of the Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application.

3. Section 3101.1–1 is amended to read as follows:

§ 3101.1–1 Availability of lands.

(a) All public domain lands subject to disposition under the Act may be leased by the Secretary of the Interior. Lands within a known geologic structure of a producing oil or gas field shall be leased only by competitive bidding to the highest responsible qualified bidder. Other public domain lands shall be leased only noncompetitively to the first qualified applicant.

(b) Public domain lands not subject to leasing:

(1) National parks and monuments.

(2) Indian reservations.

(3) Incorporated cities, towns, and villages.

(4) Naval petroleum and oil shale reserves and national petroleum reserves.

(5) Lands within 1 mile of naval or national petroleum or helium reserves shall not be leased unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

(c) The availability of acquired lands for oil and gas leasing is set out in § 3101.2–1 of this title.

4. Section 3101.1–5 is amended by revising paragraph (c)(3)(iii) to read as follows:

§ 3101.1–5 Acreage limitations.

* * * * *

(c) * * *

(3) * * *

(iii) If any party files an application for inclusion in the selection process under Subpart 3112, he/she shall be charged with the acreage thereof only if the application is successfully selected. If that application causes his/her to exceed the acreage limitation, the application shall be rejected.

* * * * *

5. Section 3101.2–1 is amended to read as follows:

§ 3101.2–1 Availability of lands.

(a) All acquired lands subject to disposition under the Act may be leased by the Secretary of the Interior. Lands within a known geological structure of a producing oil or gas field shall be leased only by competitive bidding to the highest responsible bidder. Other acquired lands shall be leased only non-competitively to the first qualified applicant.

(b) Acquired lands not subject to leasing include lands:

(1) Acquired for the development of their mineral deposits;

(2) Acquired by foreclosure or otherwise for resale;

(3) Reported as surplus under the Surplus Property Act of October 3, 1944 (50 U.S.C. 1611 et seq.);

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Circular Distribution List

(4) In incorporated cities, towns and villages;

(5) In national parks and monuments;

(6) Within naval petroleum and oil shale reserves and within the national petroleum reserves; or

(7) Which are tide lands, submerged coastal lands, within the continental shelf adjacent or littoral to any part of lands within the jurisdiction of the United States.

(c) The availability of public domain lands for oil and gas leasing is set forth in § 3101.1–1 of this title.

6. Section 3102.1 is revised to read as follows:

§ 3102.1 Who may hold interests.

(a) *General.* Leases may be acquired and held only by citizens of the United States; associations (including partnerships) of such citizens, corporations organized under the laws of the United States or of any State or territory, thereof, or municipalities.

(b) *Aliens.* Leases or interests therein may be acquired and held by aliens only through stock ownership, stock holding and stock control; and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States.

(c) *Minors.* Leases shall not be acquired or held by one considered a minor under the laws of the State in which the lands are located, but leases may be acquired and held by legal guardians or trustees of minors in their behalf.

7. Section 3102.2 and § 3102.2–1—3102.2–7 are revised to read as follows:

§ 3102.2 Statements of qualifications.

§ 3102.2–1 General requirements.

(a) *Signatures.* All statements required by the regulations in this subpart shall be holographically (manually) signed in ink. Rubber stamped or mechanically affixed signatures are not acceptable.

(b) *Certifications.* All statements required by the regulations in this subpart are subject to the provisions of § 1821.3 of this title.

(c) *Filing statements for reference.* A statement of the qualifications of a trust or guardianship (§ 3102.2–3), association (§ 3102.2–4), corporation (§ 3102.2–5), agent, if the duration of the authority to act is less than 2 years and is specifically set out (§ 3102.2–6) or municipality (§ 3102.2–9) may be placed on file with a Bureau of Land Management office described in § 1821.2–1 of this title. The office receiving the statement shall indicate its acceptance of the qualifications by assigning a serial number to the statement. Reference to this serial number may be made to any Bureau of Land Management office in lieu of resubmitting the statement. Such a reference shall constitute certification that the statement complies with paragraph (b) of this section. Amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current.

§ 3102.2–2 All applicants and offerors.

The applicant, offeror, or agent as provided in § 3102.2–6 of this title, shall certify as to age, citizenship and compliance with the acreage limitations set forth in § 3101.1–5 and 3101.2–4 of this title on the lease offer, or on the lease application if leasing is in accordance with subpart 3112 of this title.

§ 3102.2–3 Trustees and guardians.

If the offeror or applicant is a guardian or trustee filing on behalf of a ward or beneficiary, the offer, or application if leasing is pursuant to subpart 3112 of this title, shall be accompanied by a certified copy of the court order, or other document, establishing the relationship and authorizing the guardian or trustee to fulfill all obligations of the lease or arising thereunder. A statement as to the age, citizenship and as to compliance with the acreage limitations set forth in §§ 3101.1–5 and 3101.2–4 of this title by the guardian or trustee and by each ward or beneficiary shall be signed by the guardian or trustee and shall accompany each offer or application if leasing is pursuant to subpart 3112 of this title. The trustee of a revocable trust shall also submit a statement identifying the grantor of the trust and persons with the power of revocation.

§ 3102.2–4 Associations including partnerships.

(a) An association which seeks to lease shall submit with its offer, or application if leasing is in accordance with subpart 3112 of this title: (1) a certified copy of its articles of association or partnership; (2) a statement that it is authorized to hold oil and gas leases; and (3) a complete list of all general partners or members together with a statement as to their citizenship and identifying those authorized to act on behalf of the association or partnership in matters relating to Federal oil and gas leasing.

(b) A separate statement from each person owning or controlling more than 10 percent of the association, setting forth citizenship and compliance with the acreage limitations of §§ 3101.1–5 and 3101.2–4 of this title, shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with subpart 3112 of this title.

§ 3102.2–5 Corporations.

(a) A corporation which seeks to lease shall submit with its offer, or application if leasing is in accordance with subpart 3112 of this title, a statement showing: (1) The State in which it is incorporated; (2) that it is authorized to hold oil and gas leases; (3) a complete list of corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing; (4) the percentage of voting stock and of all the stock owned by aliens; and (5) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation.

(b) A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth the stockholder's citizenship, percentage of corporate stock owned or controlled and compliance with the acreage limitations of §§ 3101.1–5 and 3101.2–4 of this title shall also be filed with the proper Bureau of Land Management office not later than 15 days after the filing of an offer, or application if leasing is in accordance with subpart 3112 of this title.

§ 3102.2–6 Agents.

(a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: a power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement. (b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with subpart 3112 of this title.

§ 3102.2–7 Sole party in interest.

(a) The applicant shall set forth on the lease offer, or lease application if leasing is in accordance with subpart 3112 of this title, or on a separate accompanying sheet, the names of all other parties who own or hold any interest in the application, offer or lease, if issued.

(b) A statement, signed by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with subpart 3112 of this title. Such statement or agreement shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of §§ 3101.1–5 and 3101.2–4 of this title.

§ 3102.8 [Amended]

8. Section 3102.8 is amended by changing the section number to § 3102.2–8 and inserting the words "or applicant" after the word "offeror" wherever it occurs and by deleting from paragraph (a)(2) the words "under §§ 3102.1 and 3102.2–1," and amending paragraph (b)(2) by replacing the words "under §§ 3102.1 and 3102.2–1" with the words "of an offeror or applicant."

§ 3102.9 [Amended]

9. Section 3102.9 is amended by deleting the second sentence thereof and by changing the section number to §§ 3102.2–9.

10. Section 3102.3 is amended to read as follows:

§ 3102.3 Other showings of qualifications.

The applicant, offeror or agent may be required to submit additional information to the Bureau of Land Management to show compliance with the regulations of this part and the Act.

§ 3102.4–3102.7 [Removed]

11. Sections 3102.4 through 3102.7, inclusive, are deleted in their entirety.

12. Section 3103.1–1 is amended to read as follows:

§ 3103.1–1 Form of remittance.

All remittances shall be by cash, money order, check, certified check, bank draft or bank cashier's check, except as provided in § 3112.2–2 of this title.

13. Section 3103.2–1(a) is amended to read as follows:

§ 3103.2–1 General statement.

(a) *Offers and applications.* Each lease offer under subpart 3111 of this title and each filing for a parcel under subpart 3112 of this title shall be accompanied by a filing fee of $10. Such fee shall be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

* * * * *

14. Subpart 3108 is retitled as follows:

Subpart 3108—Relinquishment, Termination, Cancellation

15. Section 3108.2–2 is deleted in its entirety.

16. Section 3108.2–3 is deleted in its entirety.

17. Section 3108.3 is revised to read as follows:

§ 3108.3 Cancellation; bona fide purchasers.

(a) Whenever the lessee fails otherwise to comply with any of the provisions of the Act, of the regulations issued thereunder or of the lease, such lease may be canceled by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to the lessee in accordance with section 31 of the Act, if default continues for the period prescribed in that section after service of notice thereof. Any lessee of a lease which issued prior to July 29, 1954, may at any time prior to the anniversary date of such lease and the accrual of rental elect to subject the lease to the automatic termination provisions of this section by notifying, in writing, the authorized officer of the proper office to that effect.

(b) A lease known to contain valuable deposits of oil or gas may be canceled only by judicial proceedings in the manner provided in sections 27 and 31 of the Act.

(c) A lease or interest therein shall not be canceled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. All purchasers are on notice as to all pertinent regulations and all Bureau of Land Management records pertaining to the lease and the lands covered by the lease.

(d) Prompt action shall be taken to dismiss as a party to any proceedings with respect to a violation of any provisions of the Act, these regulations or the lease terms any person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(e) If during any such proceeding a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her interest thereto, or if such rights are suspended by order of the Secretary of the Interior pending a decision, payment of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

18. Section 3110.1–3 is amended to read as follows:

§ 3110.1–3 Acreage limitation.

(a) *Public domain.* An offer may not include more than 10,240 acres. The lands in the offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan has been approved as to form by the Director of the Geological Survey or where the land is surrounded by lands not available for leasing under the Act.

(b) *Acquired lands.* An offer may not include more than 10,240 acres. An offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. An offer may exceed the 6 mile square limit if:

(1) the lands are not surveyed under the rectangular survey system of public land surveys and are not within the area of the public land surveys; and

(2) the tract desired is described by the acquisition tract number assigned by the acquiring agency and less than 50 percent of the tract lies outside the 6 mile square area.

19. Section 3110.1–4 is amended by revising paragraph (b) to read as follows:

§ 3110.1–4 Withdrawal of offer or application.

* * * * *

(b) *Simultaneous filings.* An applicant may withdraw his/her simultaneous oil and gas lease application prior to selection, except as provided in § 3112.3–2 of this title. A simultaneous oil and gas lease offer may be withdrawn in the same manner as a regular offer, as described in paragraph (a) of this section.

20. Section 3110.1–6 is amended by revising paragraph (b) to read as follows:

§ 3110.1–6 Determination of priorities.

* * * * *

(b) *Simultaneous filings.* If more than one lease application is filed for a parcel under the provisions of subpart 3112 of this title, their priority shall be determined by a random selection.

§ 3111.1–1 [Amended]

21. Section 3111.1–1(e)(2) is deleted. Paragraphs (e)(3)–(5) are renumbered (e)(2)–(e)(4).

22. Subpart 3112 is revised to read as follows:

Subpart 3112—Simultaneous Filings

Sec.

3112.1 Parcels.

3112.1–1 Availability of lands.
3112.1–2 Posting of notice.
3112.2 How to file an application.
3112.2–1 Simultaneous oil and gas lease application.
3112.2–2 Filing fees.
3112.2–3 Qualifications.
3112.3 The first qualified applicant.
3112.3–1 Selection procedures.
3112.3–2 Reselection procedures.
3112.4 Lease issuance.
3112.4–1 The lease offer and payment of the first year's rental.
3112.4–2 Acceptance of lease offer.
3112.4–3 Restriction on transfer.
3112.5 Unacceptable filings.
3112.6 Adjudication.
3112.6–1 Rejection of an application.
3112.6–2 Rejection of an offer.
3112.6–3 Cancellation of leases.
3112.7 Availability of unleased lands.

§ 3112.1 Parcels.

§ 3112.1–1 Availability of lands.

All lands which are not within a known geological structure of a producing oil or gas field and are covered by canceled or relinquished leases, leases which automatically terminate for non-payment of rental pursuant to 30 U.S.C. 188, or leases which expire by operation of law at the end of their primary or extended terms are subject to leasing only in accordance with this subpart. Other lands which are not within a known geological structure of a producing oil or gas field may be leased in accordance with this subpart.

§ 3112.1–2 Posting of notice.

At the start of business on the first working day of January, March, May, July, September and November, a list of the lands for which applications shall be received shall be posted in the proper Bureau of Land Management State Office. The list shall include a notice stating that such lands are subject to the filing of lease applications from the time of such posting, until the close of business on the fifteenth working day thereafter. The available lands shall be described in leasing units identified by parcel numbers. The lands shall also be described by subdivision, section, township and range if the lands are surveyed or officially protracted; or if unsurveyed, by metes and bounds. The list shall include a statement as to, and a copy of, any standard or special stipulation applicable to each parcel. Copies of the posted notice may be purchased by mail or over the counter from the proper office.

§ 3112.2 How to file an application.

§ 3112.2–1 Simultaneous oil and gas lease applications.

(a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. The first applicant for a lease, as determined under the regulations in this subpart, who is qualified to hold a lease under the Act and the regulations in this title shall be entitled to submit an offer for the lease as described in § 3112.4–1 of this title.

(b) The application shall be holographically (manually) signed in ink by the applicant or holographically (manually) signed in ink by anyone authorized to sign on behalf of the applicant. Applications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship. (Example: Smith, agent for Jones; or Jones, principal, by Smith, agent.) Machine or rubber stamped signatures shall not be used.

(c) The name of only one citizen, association, corporation or municipality may appear as applicant on any application. The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period.

(d) The application shall include the applicant's personal or business address. All communications relating to leasing shall be sent to that address and it shall constitute the applicant's address of record for the purpose provided in § 3112.4–1 of this title. The applicant shall not use the address of any other person or entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system.

(e) The parcel applied for shall be identified by the proper parcel number, including the State prefix, as shown on the posted notice.

(f) No person or entity shall hold, own or control any interest in more than one application for a particular parcel.

(g) The properly completed and signed lease application shall be filed in the proper office of the Bureau of Land Management.

§ 3112.2–2 Filing fees.

(a) Each filing shall be accompanied by a $10 filing fee. The filing fee shall be paid in U.S. currency. Post Office or bank money order, bank cashier's check or bank certified check, made payable to the Bureau of Land Management. Checks drawn on foreign banks shall not be accepted.

(b) A single remittance is acceptable for a group of filings. Failure to submit sufficient fees to cover all filings shall render unacceptable the entire group of filings submitted with that remittance. Such filings shall be returned to the applicant in accordance with § 3112.5 of this title.

(c) An uncollectible remittance covering the filing fee(s) shall result in disqualification of all filings covered by it. In such a case, the amount of the remittance shall be a debt due to the United States which shall be paid before the applicant is permitted to participate in any future selection.

§ 3112.2–3 Qualifications.

Evidence of qualifications to hold Federal oil and gas leases shall be filed in accordance with subpart 3102 of this title.

§ 3112.3 The first qualified applicant.

§ 3112.3–1 Selection procedures.

(a) Three applications shall be randomly selected for each numbered parcel. The order in which they are selected shall fix the order in which the successful applicant shall be determined. Where only 2 applications are filed for a particular parcel, their priority shall be established through the selection process. A single filing shall automatically be considered the successful application.

(b) The results of the selection process shall be posted in the proper Bureau of Land Management office where the selection was held.

(c) All unsuccessful applicants shall be notified in writing or by return of their applications.

(d) Successful applicants shall be notified in accordance with § 3112.4–1 of this title.

(e) When the lease is issued to the first qualified applicant, unsuccessful applicants selected with lower priority for the lease shall be notified in writing or by return of their application.

§ 3112.3–2 Reselection procedures.

If a properly filed application is omitted from the selection process, a new selection shall be held. An omitted application may not be withdrawn by the applicant. The new selection shall consist of the omitted application(s) and the number of blank applications equal to the number of applications which were included in the first selection. Such selection shall be conducted in the same manner as the original selection. If the omitted application is not selected first, second or third priority in the new selection, the priority established in the original selection shall stand. However, if an omitted application is slected in the first, second or third priority, it shall displace the application selected with the same and lower priorities in the original selection. No applications chosen in the first selection shall be eliminated from priority as a result of the selection of an omitted application in the reselection. The number of priorities shall be increased as necessary.

§ 3112.4 Lease issuance.

§ 3112.4–1 The lease offer and payment of first year's rental.

(a) The lease agreement, consisting of a lease form approved by the Director, Bureau of Land Management, and stipulations included on the posted list or later determined to be necessary, shall be forwarded to the first qualified applicant for signing, together with a request for payment of the first year's rental. Only the personal hand-written

signature of the prospective lessee, or his/her attorney-in-fact as described in paragraph (b) of this section, in ink shall be accepted. The first year's rental shall be paid only by the applicant, or his/her attorney-in-fact as described in paragraph (b) of this section. The executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice. Timely receipt of the properly signed lease and rental constitutes the applicant's offer to lease.

(b) An attorney-in-fact may sign the lease offer and pay the first year's rental only if the power of attorney prohibits the attorney-in-fact from filing offers on behalf of any other participant; if the power of attorney specifically authorizes the attorney-in-fact to execute on behalf of the participant all offers, statements of interest and of holdings and other statements required, or which may be required, by the Act or the regulations; and if the power of attorney binds the participant to representations made on its behalf by the attorney-in-fact and waives any and all defenses which may be available to the participant to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney. Any attorney-in-fact signing a lease offer or paying the first year's rental on behalf of the prospective lessee shall file, together with the offer and/or rental, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed over the personal handwritten signature of the prospective lessee in ink. Evidence of the applicant's physical handicap which precludes an ability to sign may be submitted in lieu of the applicant's signature on the power of attorney.

§ 3112.4–2 Acceptance of lease offer.

The signature of the authorized officer on the lease shall constitute the acceptance of the lease offer and the issuance of the lease by the United States.

§ 3112.4–3 Restriction on transfer.

No application, offer, lease or interest therein may be transferred or assigned prior to issuance of the lease as evidenced by the signing of the lease by the authorized officer on behalf of the United States as provided in § 3112.4–2 of this title. No agreement or option to transfer or assign such application, offer, lease or interest therein shall be made or given prior to the effective date of the lease or 60 days from the applicant's receipt of priority, whichever comes first. The existence of such an agreement or option shall result in disapproval of the subsequent assignment.

§ 3112.5 Unacceptable filings.

(a) Applications shall be examined prior to selection and the application or written notice, together with the filing fee, shall be returned to the applicant for any filing which is:

(1) Received prior to the beginning of the simultaneous filing period;

(2) Received after the closing of the filing period;

(3) Accompanied by an unacceptable remittance or insufficient filing fees;

(4) Filed in the wrong office;

(5) Filed without a parcel number or with a parcel number which is not on the current posted notice; or

(6) Filed for a parcel which is withdrawn by the Bureau of Land Management.

(b) Failure to identify a filing as unacceptable prior to selection does not bar rejection after selection for the reasons listed in this section or for any reason set forth in § 3112.6 of this title.

§ 3112.6 Adjudication.

§ 3112.6–1 Rejection of an application.

Rejection is an adjudicatory process which follows selection. Filing fees for rejected filings are the property of the United States and shall not be returned.

(a) *Improper filing.* Any application which is not filed in accordance with § 3112.2 of this title or any application which is unacceptable, as set forth in § 3112.5 of this title, shall be rejected. Misplacement of name or address or incomplete address on the face of form 3112–1 shall not be a basis for rejection until 30 days from posting the list of priority or return of the documents described in § 3112.4–1 of this title as undeliverable, whichever is later.

(b) *Unqualified applicants.* The application of any applicant who is unqualified or has not filed or caused to be filed all evidence of qualification required by Subpart 3102 of this title shall be rejected.

(c) *Prohibited agreements, schemes, plans or arrangements.* Any agreement, scheme, plan or arrangement entered into prior to selection, which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest therein is prohibited and any application made in accordance with such agreement, scheme, plan or arrangement shall be rejected. Specifically:

(1) Any agreement, scheme, plan or arrangement which obligates the applicant to transfer any interest in the lease, if issued, to a third party; or which gives the third party a right of first refusal for the lease, if issued; or which obligates the applicant to use the services of the third party when assigning or transferring any interest in the lease, if issued; is prohibited is such an agreement, scheme, plan or arrangement exists between the third party and 2 or more applicants for the same parcel or if the third party files for the same parcel as the applicant;

(2) Any agreement, plan or scheme between any person or entity in the business of providing assistance to participants in a Federal oil and gas leasing program and any potential assignee whereby such person or entity will seek to induce an assignment of any lease is prohibited;

(3) Filings by members of an association (including a partnership) or officers of a corporation, under any arrangement, agreement, scheme, or plan whereby the association or corporation has an interest in more than a single filing for a single parcel are prohibited; or

(4) Separate filings by a trustee or guardian in its own behalf and on behalf of one or more beneficiaries on the same parcel or, separate filings by a trustee or guardian on behalf of two or more beneficiaries on the same parcel or, separate filings by the grantor or person with the power of revocation of a revocable trust and the trust, are prohibited.

(d) *Failure to file an offer.* The application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.4–1 of this title.

(e) *Illegal interests.* The authorized officer shall reject all filings which are made in accordance with any illegal agreement, plan, scheme or arrangement and shall take other appropriate actions including investigations for prosecution under 18 U.S.C. 1001.

§ 3112.6–2 Rejection of an offer.

(a) An offer shall be rejected if the application upon which it is based could have been properly rejected under § 3112.6–1 of this title.

(b) If, prior to the time a lease is issued, all or part of the lands in the offer are determined to be within a known geological structure of a producing oil or gas field, the offer shall be rejected in whole or in part as may be appropriate and the lease, if issued, shall include only those lands not within the known geological structure of a producing oil or gas field.

§ 3112.6–3 Cancellation of leases.

In the event a lease has been issued on the basis of an application or offer which properly should have been rejected or, if any interest in any lease is owned or controlled directly or indirectly in violation of any of the provisions of the Act or regulations in this title, action shall be taken to cancel the interest or lease unless the rights of a bona fide purchaser, as provided for in § 3108.3(c) of this title, intervene. The Government may take action to cancel regardless of whether information showing the application or offer was rejectable is obtained or was available before or after the lease was issued.

§ 3112.7 Availability of unleased lands.

(a) Where, during the filing period, 10 or fewer applications are received for any parcel and no lease issues as a result of such filings, the lands in such parcels shall be subject to leasing only

in accordance with subpart 3111 of this title.

(b) Where more than 10 applications are received for a particular parcel and all successful applicants for that parcel are rejected for any reason, the lands in such parcel shall be subject to leasing only in accordance with this subpart.

(c) If a parcel is made available 3 times on the posted list and no lease issues as a result of such posting, the lands in such parcels shall, in the discretion of the State Director of the appropriate Bureau of Land Management office, be subject to leasing in accordance with subpart 3111 of this title.

(d) If lands are available in accordance with subpart 3111 of this title pursuant to paragraphs (a) and (c) of this section, they shall be opened for the filing of lease offers by notice on the next list of lands posted by the proper Bureau of Land Management office under § 3112.1–2 of this title.

23. Section 3120.1–4 is amended by changing the reference to "§ 3102.4–1" to "§ 3102.2–5."

James W. Curlin,

Acting Assistant Secretary of the Interior.

May 20, 1980.

[FR Doc. 80–15927 Filed 5–22–80; 8:45 am]

GPO 856 – 568

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3500

[Circular No. 2466]

Fees, Rentals, and Royalties; Requirement of Minimum Production or Minimum Royalty Payments in Potassium, Sodium, Sulphur, and Phosphate Leases

Under the authority of the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.), section 3503.3–2 of Subpart 3503, Part 3500, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Section 3503 3–2(b) is amended to read as follows:

§ 3503.3–2 General statement, royalties

* * * * *

(b) *Minimum royalty.* (1) The District Mining Supervisor shall have discretion, upon the request of the lessee, to authorize the advance payment of a minimum royalty in lieu of continued operation for any particular year.

(2) Potassium, Sodium, and Sulphur. Leases will require, beginning with the 6th full calendar year of the lease term, a minimum annual production or the payment of a minimum royalty of $2 per acre per year, as adjusted in accordance with paragraph (6) of this section, unless (i) lease production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or (ii) lease operations are suspended upon a satisfactory showing that market conditions are such that the lease cannot be operated except at a loss, or (iii) lease operations are suspended by the Secretary for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

(3) Phosphate. Leases will require, beginning with the 4th year of the lease, a minimum annual production or the payment of a minimum royalty of $2 per acre per year, as adjusted in accordance with paragraph (6) of this section, unless (i) lease production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or (ii) lease operations are suspended upon a satisfactory showing that market conditions are such that the lease cannot be operated except at a loss, or (iii) lease operations are suspended by the Secretary for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

(4) Provided the lessee has established minimum production as specified by the terms of the lease, the lessee may petition the District Mining Supervisor to reduce the amount of minimum production specified in the lease upon the basis of a showing by the lessee.

The petition shall include, among other relevant information (i) the operator's estimate of the tonnage of leased minerals in the leased land; (ii) all available information as to the grade thereof; (iii) the plan of operations for the leased property and any adjoining property to be worked with it; (iv) a general statement of the method used in mining and processing the leased minerals; (v) the estimated rate of extraction; and (vi) possible absorption in the markets. Within 6 months after receiving this information, the District Mining Supervisor shall determine whether the minimum production requirement in the lease should be reduced or not. In making that determination, the District Mining Supervisor shall consider what would be a reasonable time period needed to mine the leased deposits in view of their location and the lessee's operations on adjacent lands.

(5) Any potassium, sodium, phosphate or sulphur lease renewal or readjustment after the effective date of these regulations shall require a minimum production or a minimum royalty of $2 per acre per year, as adjusted in accordance with paragraph (6) of this section, next anniversary date after renewal or readjustment.

(6) Minimum royalties due in lieu of production shall be adjusted annually in accordance with the Producer Prices and Prices Indexes (Department of Labor, Bureau of Labor Statistics). Leases issued prior to publication of these regulations shall not be affected until the next lease readjustment or renewal.

James W. Curlin,
Acting Assistant Secretary of the Interior.
May 21, 1980.

[FR Doc. 80–16172 Filed 5–27–80; 8:45 am]

Published in 45 F.R. 36034 May 28, 1980 - Effective June 27, 1980.

Circular Distribution List

GPO 856 – 569

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3500

[Circular No. 2466]

Fees, Rentals, and Royalties; Requirement of Minimum Production or Minimum Royalty Payments in Potassium, Sodium, Sulphur, and Phosphate Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking will require that potassium, sodium, sulphur, and phosphate mineral leases contain a provision calling for minimum production or the payment of a specified minimum royalty. The minimum production or minimum royalty requirement is necessary to ensure a fair return to the United States for the disposition of mineral rights. The long-term intended effect of the rulemaking is to encourage production of these minerals.

DATE: Effective June 27, 1980.

ADDRESS: Any suggestions or inquiries should be addressed to: Director (520), 1800 C Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David M. Carty (202) 343–7753.

SUPPLEMENTARY INFORMATION: The principal author of this final rulemaking is David M. Carty of the Division of Mineral Resources, Bureau of Land Management, Washington, D.C., assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

Proposed rulemaking was published on pages 12464–12466 in the Federal Register of March 7, 1979, and invited comments for 60 days ending May 7, 1979. The comment period was subsequently extended 90 days to August 7, 1979. Comments were received from 37 sources including businesses, individuals and Federal agencies. These comments have been reviewed and analyzed. The following summarizes the comments, suggestions and actions taken.

Speculation

The proposed regulation included a substantial increase in the minimum royalty which, in part, was intended to discourage speculation in minerals on public lands. It was suggested by the comments that this increase in minimum royalties would penalize the leaseholder who has invested in mining and processing facilities based on the assumption of an inexpensive source of leased reserves. It was further pointed out that the majority of these leaseholders are large, competitive organizations that might consider it prudent to drop their reserve leases because of the added costs. These dropped leases might then be picked up by a person or organization with a more speculative bent, thus defeating this particular purpose of the regulations.

The point was also made that prospecting and the development of minerals are by their very nature speculative and that the increase in minimum royalties would merely make it more expensive to pursue these activities. Additionally, there would also be a tendency to discourage those with small capitalization from entering the field which in turn would lead to reduced competition.

It was also pointed out that no documented case has been made to verify the existence of speculation in the leasing of the minerals in question.

Encouraging Production

One of the intended effects of the proposed rulemaking was to encourage mineral production. The general reaction to this in the comments was that the increase in minimum royalties would instead discourage production because the costs would be passed on to the consumer which would result in reduced demand.

The comments expressed the view that extensive, inexpensive and assured reserves are necessary to encourage the full production of these minerals.

In particular, the comments expressed the feeling that leased areas containing fringe or marginal deposits would be abandoned after fulfilling any reclamation requirements. It was further believed that such areas wouldn't be mined in the future because the installation of new production facilities would be too expensive.

The comments also expressed the fear that increasing the cost of domestic production of these minerals might lead to an increased dependence on foreign supplies.

Finally, the comments suggested that minimum royalties should be eliminated on those leased areas that have been mined out, but are still essential for access and the facilities necessary for mineral production.

Fair Return

Another purpose of the proposed rulemaking was to assure a fair return to the Federal Government. The general response to this was that the Federal Government receives a fair return for these minerals through the production royalty which is based on an annually determined value of the ore. The comments also suggested that the production royalty also provides the best means of coping with the inflationary aspect of obtaining a fair return. One comment expressed the opinion that the proposed increase in minimum royalties from the 1920 base would be in violation of the President's voluntary wage and price standards.

Royalty Alternatives

Comments suggested many alternatives to the proposed conditions of royalty payment, including:

(1) Defer increases in minimum royalties indefinitely.

(2) Allow production royalties to be credited to the minimum royalties required on nonproducing leases.

(3) Credit minimum royalties paid on nonproducing leases to the production royalties when the leases become productive.

(4) Require minimum royalties or production royalties, but not both.

(5) Exempt minimum royalties on nonproducing leases that, taken with producing leases, comprise a logical economic unit.

(6) Exempt minimum royalties where mine development is delayed by—

(a) Environmental considerations;

(b) Long-term drilling necessary to develop an acceptable mining plan;

(c) Tardy approval of a mining plan;

(d) Compliance with laws or regulations;

(e) Feasibility studies;

(f) Permit applications;

(g) Impact studies; or

(h) While constructing mining or processing facilities.

(7) Do not change minimum royalties for worked-out areas that support production facilities or access necessary for the continuation of an operation.

(8) Determine royalties on a case-by-case basis because of the disparity of minerals between areas.

Minimum Production

The preamble of the proposed rulemaking opened for comment the possibility of eliminating minimum royalties and replacing them with requirements for the minimum production of minerals. Reader reaction to this idea was generally negative on the grounds that it would place the Government in a position of deciding when and in what quantities the minerals should be produced. The comments felt that these decisions are best left to private industry because it has the ability to react to changing market demands with a rapidity that is necessary for efficient operations.

There were a number of responses to the request for comments on the legal authority for minimum production. The time and effort of those responding to this request is appreciated. However, the issue has become moot because the minimum production requirement has been deleted from the rulemaking.

Miscellaneous

A number of comments expressed the view that a Regulatory Analysis should be prepared for this rulemaking. This rulemaking was in process prior to the effective date of the Department's regulations (43 CFR Part 14) and was not covered. However, the rulemaking was considered under the guidelines applicable to Executive Order 12044 and a determination was made that the rulemaking did not fall within the requirements for a regulatory analysis set in these guidelines. The basis for the conclusion that a regulatory analysis was not needed was discussed in part in the preamble to the proposed rulemaking. With the changes made in the final rulemaking, it is clear that the provisions of existing guidelines do not require a regulatory analysis.

The comments suggested that this rulemaking incorporate the logical mining unit concept so that production royalties could be used in lieu of minimum royalties. It has been decided logical mining units are not needed time, but the concept will be ned for possible future use.

The comments also suggested that a provision be added to this rulemaking which would assure that the transfer of an existing lease would not result in a change in the rates of the lease. Such a provision is unnecessary because applicable law does not provide for a rate change at the time of transfer.

The comment was made that the requirement of minimum annual production or the payment of a minimum royalty in paragraph 3503.3–2(b)(2) has questionable statutory authority as applied to sodium leases. Section 32 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 189), is considered to provide the necessary authority for this requirement.

It was suggested that subparagraph 3503.3–2(b)(2)(ii) be changed so that the lessee will be exempted from the requirement of minimum production or minimum royalties if the lessee's profit falls below 10 percent of his capital investment and operating expenses. To do this would be at cross purposes with the encouragement of production.

A comment requested that the term "commercial quantities" as used in ph 3503.3–2(b)(4) be defined. graph has not been included in the final rulemaking, so there is no need to define the term.

One comment found paragraph 3503.3–2(b)(5) objectionable because of the feeling that it would allow the authorized officer to dictate company production schedules. Since it is customary to set minimum production at a level that will generate production royalties equal to the minimum royalties, the reduction of the minimum production level would raise the question of whether the Federal Government would then be receiving a fair return for the minerals leased. This, it would seem, is sufficient reason for the Government to become involved in setting any reduction in the previously agreed upon minimum production level. It must also be pointed out that the Government is not concerned when a lessee decides to produce at some level above the minimum production.

Another comment expressed the feeling that any mineral reserve estimates provided to fulfill the requirements of paragraph 3503.3–2(b)(5) of the proposed rulemaking should be held in strict confidence. If an applicant requests that information be held confidential and gives reasons therefor, that request will be honored to the extent possible under the provisions of the Freedom of Information Act.

There was concern expressed that paragraph 3503.3–2(b)(5) of the proposed rulemaking could be interpreted to be retroactive and that the resultant minimum royalties would prove to be an excessive burden on those unrenewed leases of the past few years that have been allowed to continue production. This paragraph has been changed to make it clear that the new minimum royalty will not be retroactive.

Changes

In light of the foregoing review of comments received and after extensive internal discussions three significant changes have been made in the final rulemaking. These changes are: (1) minimum royalties have been reduced to $2.00 per acre per year with no increase in the 10th year; (2) the requirement that a lease must achieve production in commercial quantities before it can qualify for a reduction in the minimum royalty payment has been deleted; and (3) minimum royalties will be adjusted annually in accordance with the Producer Prices and Price Indexes (Department of Labor, Bureau of Labor Statistics).

Editorial and clarification changes of the proposed regulations have been made as needed.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.), section 3503.3–2 of Subpart 3503, Part 3500, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

James W. Curlin,

Acting Assistant Secretary of the Interior.

May 21, 1980.

1. Section 3503.3–2(b) is amended to read as follows:

§ 3503.3–2 General statement, royalties

* * * * *

(b) *Minimum royalty.* (1) The District Mining Supervisor shall have discretion, upon the request of the lessee, to authorize the advance payment of a minimum royalty in lieu of continued operation for any particular year.

(2) Potassium, Sodium, and Sulphur. Leases will require, beginning with the 6th full calendar year of the lease term, a minimum annual production or the payment of a minimum royalty of $2 per acre per year, as adjusted in accordance with paragraph (6) of this section, unless (i) lease production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or (ii) lease operations are suspended upon a satisfactory showing that market conditions are such that the lease cannot be operated except at a loss, or (iii) lease operations are suspended by the Secretary for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

(3) Phosphate. Leases will require, beginning with the 4th year of the lease, a minimum annual production or the payment of a minimum royalty of $2 per acre per year, as adjusted in accordance with paragraph (6) of this section, unless (i) lease production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or (ii) lease operations are suspended upon a satisfactory showing that market conditions are such that the lease cannot be operated except at a loss, or (iii) lease operations are suspended by the Secretary for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

(4) Provided the lessee has established minimum production as specified by the terms of the lease, the lessee may petition the District Mining Supervisor to reduce the amount of minimum production specified in the lease upon the basis of a showing by the lessee.

The petition shall include, among other relevant information (i) the operator's estimate of the tonnage of

leased minerals in the leased land; (ii) all available information as to the grade thereof; (iii) the plan of operations for the leased property and any adjoining property to be worked with it; (iv) a general statement of the method used in mining and processing the leased minerals; (v) the estimated rate of extraction; and (vi) possible absorption in the markets. Within 6 months after receiving this information, the District Mining Supervisor shall determine whether the minimum production requirement in the lease should be reduced or not. In making that determination, the District Mining Supervisor shall consider what would be a reasonable time period needed to mine the leased deposits in view of their location and the lessee's operations on adjacent lands.

(5) Any potassium, sodium, phosphate or sulphur lease renewal or readjustment after the effective date of these regulations shall require a minimum production or a minimum royalty of $2 per acre per year, as adjusted in accordance with paragraph (6) of this section, next anniversary date after renewal or readjustment.

(6) Minimum royalties due in lieu of production shall be adjusted annually in accordance with the Producer Prices and Prices Indexes (Department of Labor, Bureau of Labor Statistics). Leases issued prior to publication of these regulations shall not be affected until the next lease readjustment or renewal.

* * * * *

[FR Doc. 80-16172 Filed 5-27-80; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2710, 2730, 2750 and 2760

[Circular No. 2467]

Sales—Federal Land Policy and Management Act; Sale of Public Lands

Under the authority of section 203 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1740), Group 2700, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is amended as follows.

1. Part 2710 is revised as follows:

Group 2700—Disposition—Sales

PART 2710—SALES—FEDERAL LAND POLICY AND MANAGEMENT ACT

Subpart 2710—Sales—General Provisions

Sec.
2710.0–1 Purpose.
2710.0–2 Objective.
2710.0–3 Authority.
2710.0–5 Definitions.
2710.0–6 Policy.
2710.0–8 Lands subject to sale.

Subpart 2711—Sales—Procedures

Sec.
2711.1 Initiation of sale.
2711.1–1 Identification of tracts by land use planning.
2711.1–2 Notice of realty action.
2711.1–3 Sales requiring grazing permit or lease cancellations.
2711.2 Qualified conveyees.
2711.3. Procedures for sale.
2711.3–1 Sales through competitive bidding.
2711.3–2 Sale by other than competitive bidding.
2711.4 Compensation for authorized improvements.
2711.4–1 Grazing improvements.
2711.4–2 Other private improvements.
2711.5 Conveyance documents.
2711.5–1 Mineral reservation.
2711.5–2 Terms, convenants, conditions and reservations.
2711.5–3 Notice of conveyance.

Authority: 43 U.S.C. 1713, 1740.

Subpart 2710—Sales—General provisions

§ 2710.0–1 Purpose.

The regulations in this part implement the sale authority of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713).

§ 2710.0–2 Objective.

The objective is to provide for the orderly disposition at not less than fair market value of public lands identified for sale as part of the land use planning process.

§ 2710.0–3 Authority.

(a) The Secretary of the Interior is authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713), to sell public lands where, as a result of land use planning, it is determined that the sale of such tract meets any or all of the following disposal criteria:

(1) Such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(2) Disposal of such tract shall serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on lands other than public lands and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership; or

(3) Such tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.

(b) The Secretary of the Interior is authorized by section 310 of the Federal Land Policy and Management Act (43 U.S.C. 1740) to promulgate rules and regulations to carry out the purpose of the Act.

§ 2710.0–5 Definitions.

As used in this part, the term

(a) "Public lands" means any lands and interest in lands owned by the United States and administered by the Secretary through the Bureau of Land Management except:

(1) Lands located on the Outer Continental Shelf;

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(d) "Act" means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701).

(e) "Family sized farm" means the unit of public lands determined to be chiefly valuable for agriculture, and that is of sufficient size, based on land use capabilities, development requirements and economic capability, to provide a level of net income, after payment of expenses and taxes, which will sustain a family sized agribusiness operation above the poverty level for a rural farm family of 4 as determined by the Bureau of Labor Statistics, U.S. Department of Labor, for the calender year immediately preceeding the year of the proposed sale under the regulations of this part. The determination of the practical size is an economic decision to be made on a local area basis considering, but not limited to, factors such as: climatic conditions, soil character, availability of irrigation water, topography, usual crop(s) of the locale, marketability of the crop(s), production and development costs, and other physical characteristics which shall give reasonable assurance of continued production under proper conservation management.

§ 2710.0–6 Policy.

(a) Sales under this part shall be made only in implementation of an approved land use plan or analysis in accordance with Part 1600 of this title.

(b) Public lands determined to be suitable for sale shall be offered only on the initiative of the Burau of Land Management. Indications of interest to have specific tracts of public lands offered for sale shall be accomplished through public input to the land use planning process. (See §§ 1601.1–1 and 1601.8 of this title).

(c) Sales of public lands shall generally be through competitive bidding procedures provided for in § 2711.3–1 of this title.

(d) Sales of public lands determined to be chiefly valuable for agriculture shall be no larger than necessary to support a family-sized farm.

(e) The sale of family-sized farm units, at any given sale, shall be limited to one unit per bidder and one unit per family. The limit of one unit per family is not to

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Circular Distribution List

be be construed as limiting children eighteen years or older from bidding in their own right.

(f) Sales under this part shall not be made at less than fair market value. Such value is to be determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the *Uniform Appraisal Standards for Federal Land Acquisitions.* The value of authorized improvements owned by anyone other than the United States upon lands being sold shall not be included in the determination of fair market value. Technical review and approval for conformance with appraisal standards shall be conducted by the authorized officer.

(g) Constraint and discretion shall be used with regard to the terms, covenants, conditions and reservations authorized by section 208 of the act that are to be in sales patents and other conveyance documents, except where inclusion of such provisions is required by law or for protection of valid existing rights.

§ 2710.0–8 Lands subject to sale.

(a) All public lands, as defined by § 2710.0–5 of this title, and, which meet the disposal criteria specified under § 2710.0–3 of this title, are subject to sale pursuant to this part, except:

(1) Those public lands within the revested Oregon California Railroad and reconveyed Coos Bay Wagon Road grants which are more suitable for management and administration for permanent forest protection and other purposes as provided for in the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181(a)); May 24, 1939 (53 Stat. 753); and section 701(b) of the act.

(2) Public lands in units of the National Wilderness Preservation System, National Wild and Scenic Rivers System and National System of Trails.

(3) Public lands classified, withdrawn, reserved or otherwise designated as not available or subject to sale shall not be sold under the regulations of this part until issuance of an order or notice which either opens or provides for such disposition.

(b) Unsurveyed public lands shall not be sold under the regulations of this part until they are officially surveyed under the public land survey system of the United States. Such survey shall be completed and approved by the Secretary prior to any sale.

Subpart 2711—Sales—Procedures

§ 2711.1 Initiation of sale.

§ 2711.1–1 Identification of tracts by land use planning.

(a) Tracts of public lands shall only be offered for sale in implementation of land use planning prepared and/or approved in accordance with subpart 1601 of this title.

(b) Public input proposing tracts of public lands for disposal through sale as part of the land use planning process may be made in accordance with §§ 1601.3, 1601.6–3 or § 1601.8 of this title.

§ 2711.1–2 Notice of realty action.

(a) A notice of realty action offering for sale a tract or tracts of public lands identified for disposal by sale shall be issued, published and sent to parties of interest by the authorized officer not less than 60 days prior to the sale. The notice shall include the terms, convenants, conditions and reservations which are to be included in the conveyance document and the method of sale. The notice shall also provide 45 days after the date of issuance for the right of comment by the public and interested parties.

(b) The notice shall be sent to the Governor of the State within which the public lands are located, the head of the governing body of any political subdivision having zoning or other land use regulatory responsibilities in the geographical area within which the public lands and the head of any political subdivision having administration or public services responsibility in the geographic area within which the public lands are located, are located not less than 60 days prior to the sale. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current or past land users.

(c) The notice shall be published once in the **Federal Register** and once a week for 3 weeks thereafter in a newspaper of general circulation in the general vicinity of the public lands being proposed to be offered for sale.

(d) For tracts of public lands in excess of 2,500 acres, the notice shall be submitted to the Senate and the House of Representatives not less than the 90 days prescribed by section 203 of the act (43 U.S.C. 1713(c)) prior to the date of sale. The sale may not be held prior to the completion of the congressional notice period unless such period is waived by Congress.

§ 2711.1–3 Sales requiring grazing permit or lease cancellations.

When the sale of a tract, as identified, requires the cancellation of a grazing permit or lease, in its entirety, notice shall be given the permittee or lessee 2 years prior to disposal except in cases of emergency. A permittee or lessee may unconditionally waive the 2-year notice (See 43 CFR 4110.4–2(b)). The publication of a notice of realty action as provided in § 2711.1–2(c) of this title shall constitute notice to the grazing permittee or lessee if such notice has not been previously given.

§ 2711.2 Qualified conveyees.

Tracts sold under this part may only be conveyed to:

(a) A citizen of the United States 18 years of age or over;

(b) A corporation subject to the law of any State or of the United States;

(c) A State, State instrumentality or political subdivision authorized to hold property; and

(d) An entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. Where applicable, the entity shall also meet the requirements of paragraphs (a) and (b) of this section.

§ 2711.3 Procedures for sale.

§ 2711.3–1 Sales through competitive bidding.

When public lands are offered through competitive bidding:

(a) The date, time, place, and manner for submitting bids shall be specified in the notice required by § 2711.1–2 of this title.

(b) Bids may be made by a principal or a duly qualified agent.

(c) Sealed bids shall be considered only if received at the place of sale prior to the hour fixed in the notice and are made for at least the fair market value. Each bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice. If 2 of more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing shall be held by the authorized officer immediately following the opening of the sealed bids.

(d) The highest qualifying sealed bid received shall be publicly declared by the authorized officer. If the notice published pursuant to § 2711.1–2 of this title provides for oral bids, such bids, in increments specified by the authorized officer, shall then be invited. After oral bids, if any, are received, the highest qualifying bid, designated by type, whether sealed or oral, shall be declared by the authorized officer. The person declared to have entered the highest qualifying oral bid shall submit payment by cash, personal check, bank draft, money order, or any combination for not less than one-fifth of the amount of the bid immediately following the close of the sale. The successful bidder, whether such bid is a sealed or oral bid, shall submit the remainder of the full bid price prior to the expiration of 30 days from the date of the sale. Failure to submit the full bid price prior to, but not including the 30th day following the day of the sale, shall result in cancellation of the sale of the specific parcel and the deposit shall be forfeited and disposed of as other receipts of sale. In the event

the authorized officer rejects the highest qualified bid or releases the bidder from it, the authorized officer shall determine whether the public lands shall be withdrawn from the market or be reoffered.

(e) If the public lands are not sold pursuant to the notice issued under § 2711.1–2 of this title, they may remain available for sale on a continuing basis until sold as specified in the notice.

(f) The acceptance or rejection of any offer to purchase shall be in writing no later than 30 days after receipt of such offer unless the offerer waives his right to a decision within such 30-day period. In case of a tract of land in excess of 2,500 acres, such acceptance or rejection shall not be given until the expiration of 30 days after the end of the notice to the Congress provided for in § 2711.1–2(d) of this title.

Prior to the expiration of such periods the authorized officer may refuse to accept any offer or may withdraw any tract from sale if he determines that:

(1) Consummation of the sale would be inconsistent with the provisions of any existing law; or

(2) Collusive or other activities have hindered or restrained free and open bidding; or

(3) Consummation of the sale would encourage or promote speculation in public lands.

(g) Until the acceptance of the offer and payment of the purchase price, the bidder has no contractual or other rights against the United States, and no action taken shall create any contractual or other obligations of the United States.

§ 2711.3–2 Sale by other than competitive bidding.

(a) Public lands may be offered for sale utilizing modified competitive bidding procedures when the authorized officer determines it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies.

(1) Modified competitive bidding includes, but is not limited to:

(i) Offering to designated bidders the right to meet the highest bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions; or

(ii) A limitation of persons permitted to bid on a specific tract of land offered for sale.

(2) Factors that shall be considered in determining when modified competitive bidding procedures shall be used, include but are not limited to: needs of State and/or local government, adjoining landowners, historical users, and other needs for the tract. A description of the method of modified competitive bidding to be used and a statement indicating the purpose or objective of the bidding procedure selected shall be specified in the notice of realty action required in § 2711.1–2 of this title.

(b) Noncompetitive sales may be utilized when, in the opinion of the authorized officer the public interest would best be served by a direct sale. Examples include, but are not limited to: (1) A tract identified for transfer to State of local government; (2) a tract identified for sale that is an integral part of a project of public importance and speculative bidding would jeopardize the timely completion and economic viability of the project; or (3) there is a need to recognize authorized use, for example, when an existing business would be threatened if the tract were purchased by other than the authorized user.

(c) Once the method of modified competitive or noncompetitive sale is determined and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be by the same instruments as authorized in § 2711.3–1(c) of this title.

(d) Acceptance or rejection of any offer to purchase shall be in accordance with the procedures set forth in § 2711.3–1 (f) and (g) of this title.

§ 2711.4 Compensation for authorized improvements.

§ 2711.4–1 Grazing improvements.

No public lands in a grazing lease or permit may be conveyed until the provisions of Part 4100 of this title concerning compensation for any authorized grazing improvements have been met.

§ 2711.4–2 Other private improvements.

Where public lands to be sold under this part contain authorized private improvements, other than those identified in § 2711.4–1 of this title or those subject to a patent reservation, the owner of such improvements shall be given an opportunity to remove them if such owner has not been declared the purchaser of the lands sold, or the prospective purchaser may compensate the owner of such authorized private improvements and submit proof of compensation to the authorized officer.

§ 2711.5 Conveyance documents.

§ 2711.5–1 Mineral reservation.

Patents and other conveyance documents issued under this part shall contain a reservation to the United States of all minerals. Such minerals shall be subject to the right to explore, prospect for, mine, and remove under applicable law and such regulations as the Secretary may prescribe. However, upon the filing of an application as provided in Part 2720 of this title, the Secretary may convey the mineral interest if all requirements of the law are met. Where such application has been filed and meets the requirements for conveyance, the authorized officer may withhold issuance of a patent or other document of conveyance on lands sold under this part until processing of the mineral conveyance application is completed, at which time a single patent or document of conveyance for the entire estate or interest of the United States may be issued.

§ 2711.5–2 Terms, covenants, conditions, and reservations.

Patents or other conveyance documents issued under this part may contain such terms, covenants, conditions, and reservations as the authorized officer determines are necessary in the public interest to insure proper land use and protection of the public interest as authorized by section 208 of the act.

§ 2711.5–3 Notice of conveyance.

The authorized officer shall publish a notice in the **Federal Register** and immediately notify the Governor and the heads of local government of the issuance of conveyance documents for public lands within their respective jurisdiction.

2. Group 2700 is further revised by the deletion of the following parts.

PART 2730 [DELETED]

(a) Part 2730 is deleted. However, this Part will remain applicable to existing Small Tract Act leases and their renewal or sale pursuant to Subpart 2913 by reference in that subpart.

PART 2750 [DELETED]

(b) Part 2750 is deleted.

PART 2760 [AMENDED]

(c) Part 2760 is deleted except for subparts 2764 and 2765 which are retained.

Guy R. Martin,
Assistant Secretary of the Interior.
June 3, 1980.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[Circular No. 2468]

Rights-of-Way, Principals and Procedures; Federal Land Policy and Management Act; Management of Rights-of-Way and Related Facilities on Public Lands and Reimbursement of Costs

Under the authority of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771), Group 2800, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is revised as follows.

1. Part 2800 is revised to read as follows:

Group 2800—Use; Rights-of-Way

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Subpart 2800—Rights-of-Way; General

Sec.

2800.0–1 Purpose.
2800.0–2 Objectives.
2800.0–3 Authority.
2800.0–5 Definitions.
2800.0–7 Scope.

Subpart 2801—Terms and Conditions of Rights-of-Way Grants and Temporary Use Permits

2801.1 Nature of interest.
2801.1–1 Nature of right-of-way interest.
2801.1–2 Reciprocal grants.
2801.2 Terms and conditions of interests granted.
2801.3 Unauthorized occupancy.

Subpart 2802—Applications

2802.1 Pre-application activity.
2802.2 Application filing activity.
2802.2–1 Application filing.
2802.2–2 Coordination of applications.
2802.3 Application content.
2802.3–1 Applicant qualifications and disclosure.
2802.3–2 Technical and financial capability.
2802.3–3 Project description.
2802.3–4 Environmental protection plan.
2802.3–5 Additional information.
2802.3–6 Maps.
2802.4 Application processing.
2802.5 Special application procedures.

Subpart 2803—Administration of Rights Granted

Sec.

2803.1 General requirements.
2803.1–1 Reimbursement of costs.
2803.1–2 Rental fees.
2803.1–3 Bonding.
2803.1–4 Liability.
2803.2 Holder activity.
2803.3 Immediate temporary suspension of activities.
2803.4 Suspension and termination of grants and permits.
2803.4–1 Disposition of improvements upon termination.
2803.5 Change in Federal jurisdiction or disposal of lands.
2803.6 Amendments, assignments and renewals.
2803.6–1 Amendments.
2803.6–2 Amendments to existing railroad grants.
2803.6–3 Assignments.
2803.6–4 Reimbursement of costs for assignments.
2803.6–5 Renewals of right-of-way grants and temporary use permits.

Subpart 2804—Appeals

2804.1 Appeals procedure—general.

Subpart 2805—Applications for Electric Power Transmission Line of 66 kV or Above

2805.1 Application requirements.

Subpart 2806—Right-of-Way Corridor Designation

2806.1 Corridor designation.
2806.2 Designation criteria.
2806.2–1 Procedures for designation.

Subpart 2807—Reservations to Federal Agencies

2807.1 Application filing.
2807.1–1 Document preparation.
2807.1–2 Termination and suspension.

Authority: 43 U.S.C. 1761–1771.

Subpart 2800—Rights-of-Way; General

§ 2800.0–1 Purpose.

The purpose of the regulations in this part is to establish procedures for the orderly and timely processing of applications, grants, permits, amendments, assignments and terminations for rights-of-way and permits over, upon, under or through public lands pursuant to title V, Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771).

§ 2800.0–2 Objectives

It is the objective of the Secretary of the Interior to grant rights-of-way and temporary use permits, covered by the regulations in this part, to any qualified individual, business entity, or governmental entity and to regulate, control and direct the use of said rights-of-way on public land so as to:

(a) Protect the natural resources associated with the public lands and adjacent private or other lands administered by a government agency.

(b) Prevent unnecessary or undue environmental damage to the lands and resources.

(c) Promote the utilization of rights-of-way in common with respect to engineering and technological compatibility, national security and land use plans.

(d) Coordinate, to the fullest extent possible, all actions taken pursuant to this part with State and local governments, interested individuals and appropriate quasi-public entities.

§ 2800.0–3 Authority.

The regulations for this subpart are issued under title V of the Federal Land Policy and Management Act of 1976.

§ 2800.0–5 Definitions.

As used in this part, the term:

(a) "Act" means the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701 et seq.).

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(d) "Public lands" means any lands or interest in land owned by the United States and administered by the Secretary through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(e) "Applicant" means any qualified individual, partnership, corporation, association or other business entity, and any Federal, State or local governmental entity including municipal corporations which applies for a right-of-way grant or a temporary use permit.

(f) "Holder" means any applicant who has received a right-of-way grant or temporary use permit.

(g) "Right-of-way" means the public lands authorized to be used or occupied pursuant to a right-of-way grant.

(h) "Right-of-way grant" means an instrument issued pursuant to title V of the act authorizing the use of a right-of-way over, upon, under or through public

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lands for construction, operation, maintenance and termination of a project.

(i) "Temporary use permit" means a revocable non-possessory, non-exclusive privilege, authorizing temporary use of public lands in connection with construction, operation, maintenance, or termination of a project.

(j) "Facilities" means improvements constructed or to be constructed or used within a right-of-way pursuant to a right-of-way grant.

(k) "Project" means the transportation or other system for which the right-of-way is authorized.

(l) "Right-of-way corridor" means a parcel of land either linear or areal in character that has been identified, by law, Secretarial Order, through the land use planning process or other management decision process as being suitable to accommodate more than one type of right-of-way or one or more rights-of-way which are similar, identical, or compatible.

(m) "Casual use" means activities that involve practices which do not ordinarily cause any appreciable disturbance or damage to the public lands, resources or improvements and, therefore, do not require a right-of-way grant or temporary use permit under this title.

§ 2800.0–7 Scope.

This part sets forth regulations governing:

(a) Issuing, amending or renewing right-of-way grants for necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under or through public lands, including but not limited to:

(1) Reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels and other facilities and systems for the impoundment, storage, transportation or distribution of water;

(2) Pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) Systems for generation, transmission and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935 (16 U.S.C. 791);

(5) Systems for transmission or reception of radio, television, telephone, telegraph and other electronic signals, and other means of communication;

(6) Roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System;

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under or through such lands; or

(8) Rights-of-way to any Federal department or agency for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any product produced therefrom.

(b) Temporary use of additional public lands for such purposes as the Secretary determines to be reasonably necessary for construction, operation, maintenance or termination of rights-of-way, or for access to the project or a portion of the project.

(c) However, the regulations contained in this part do not cover right-of-way grants for: Federal Aid Highways, roads constructed or used pursuant to cost share or reciprocal road use agreements, wilderness areas, and oil, gas and petroleum products pipelines except as provided for in § 2800.0–7(a)(8) of this title.

Subpart 2801—Terms and Conditions of Rights-of-Way Grants and Temporary Use Permits

§ 2801.1 Nature of interest.

§ 2801.1–1 Nature of right-of-way interest.

(a) All rights in public lands subject to a right-of-way grant or temporary use permit not expressly granted are retained and may be exercised by the United States. These rights include, but are not limited to:

(1) A continuing right of access onto the public lands covered by the right-of-way grant or temporary use permit, and upon reasonable notice to the holder, access and entry to any facility constructed on the right-of-way or permit area;

(2) The right to require common use of the right-of-way, and the right to authorize use of the right-of-way for compatible uses (including the subsurface and air space).

(b) A right-of-way grant or temporary use permit may be used only for the purposes specified in the authorization. The holder may allow others to use the land as his/her agent in exercising the rights granted.

(c) All right-of-way grants and temporary use permits shall be issued subject to valid existing rights.

(d) A right-of-way grant or temporary use permit shall not give or authorize the holder to take from the public lands any mineral or vegetative material, including timber, without securing authorization under the Materials Act (30 U.S.C. 601 et seq.), and paying in advance the fair market value of the material cut, removed, used, or destroyed. However, common varieties of stone and soil necessarily removed in the construction of a project may be used elsewhere along the same right-of-way or permit area in the construction of the project without additional authorization and payment. The holder shall be allowed in the performance of normal maintenance to do minor trimming, pruning and clearing of vegetative material within the right-of-way or permit area and around facilities constructed thereon without additional authorization and payments. At his discretion and when it is in the public interest, the authorized officer may in lieu of requiring an advance payment for any mineral or vegetative materials, including timber, cut or excavated, require the holder to stockpile or stack the material at designated locations for later disposal by the United States.

(e) A holder of a right-of-way grant or temporary use permit may assign a grant or permit to another, provided the holder obtains the written approval of the authorized officer.

(f) The holder of a right-of-way grant may authorize other parties to use a facility constructed, except for roads, on the right-of-way with the prior written consent of the authorized officer and charge for such use. In any such arrangement, the holder shall continue to be responsible for compliance with all conditions of the grant. This paragraph does not limit in any way the authority of the authorized officer to issue additional right-of-way grants or temporary use permits for compatible uses on or adjacent to the right-of-way, nor does it authorize the holder to impose charges for the use of lands made subject to such additional right-of-way grants or temporary use permits.

(g) Each right-of-way grant or temporary use permit shall describe the public lands to be used or occupied and the grant or permit shall be limited to those lands which the authorized officer determines:

(1) Will be occupied by the facilities authorized;

(2) To be necessary for the construction, operation, maintenance, and termination of the authorized facilities;

(3) To be necessary to protect the public health and safety; and

(4) Will do no unnecessary damage to the environment.

(h) Each grant or permit shall specify its term. The term of the grant shall be limited to a reasonable period. A reasonable period for a right-of-way grant may range from a month to a year or a term of years to perpetuity. The term for a temporary use shall not exceed 3 years. In determining the period for any specific grant or permit, the authorized officer shall provide for a term no longer than is necessary to accomplish the purpose of the

authorization. Factors to be considered by the authorized officer for the purpose of establishing an equitable term pertaining to the use include, but are not limited to:

(1) Land use plans and other management decisions;

(2) Public benefits provided;

(3) Cost and useful life of the facility;

(4) Project financing; and

(5) Time limitations imposed by required licenses or permits that the holder is required to secure from other Federal or State agencies; and

(6) Any other limitations imposed by Federal or State law on the holder which would indicate that the right-of-way grant not be limited to a term of years.

(i) Each grant issued for a term of 20 years or more shall contain a provision requiring periodic review of the grant at the end of the twentieth year and at regular intervals thereafter not to exceed 10 years.

(j) Each grant shall have a provision stating whether it is renewable or not and if renewable, the terms and conditions applicable to the renewal.

(k) Each grant shall not only comply with the regulations of this part, but also comply with the provisions of any other applicable law and implementing regulations as appropriate.

§ 2801.1–2 Reciprocal grants.

When the authorized officer determines from an analysis of land use plans or other management decisions that a right-of-way for an access road is or shall be needed by the United States across lands directly or indirectly owned or controlled by an applicant for a right-of-way grant, he or she shall, if it is determined to be in the public interest, require the applicant, as a condition to receiving a right-of-way grant, to grant the United States an equivalent right-of-way that is adequate in duration and rights.

§ 2801.2 Terms and conditions of interest granted.

(a) An applicant by accepting a right-of-way grant, temporary use permit, assignment, amendment or renewal agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(1) To the extent practicable, all State and Federal laws applicable to the authorized use and such additional State and Federal laws, along with the implementing regulations, that may be enacted and issued during the term of the grant or permit.

(2) That in the construction, operation, maintenance and termination of the authorized use, there shall be no discrimination against any employee or applicant for employment because of race, creed, color, sex or national origin and all subcontracts shall include an identical provision.

(3) To rebuild and repair roads, fences, and established trails that may be destroyed or damaged by construction, operation or maintenance of the project and to build and maintain suitable crossings for existing roads and significant trails that intersect the project.

(4) To do everything reasonably within his or her power, both independently and upon request of the authorized officer, to prevent and suppress fires on or in the immediate vicinity of the right-of-way or permit area. This includes making available such construction and maintenance forces as may be reasonably obtained for the suppression of fires.

(b) All right-of-way grants and temporary use permits issued, renewed, amended or assigned under these regulations shall contain such terms, conditions, and stipulations as may be required by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use and termination. The authorized officer shall impose stipulations which shall include, but shall not be limited to:

(1) Requirements for restoration, revegetation and curtailment of erosion of the surface of the land, or any other rehabilitation measure determined necessary;

(2) Requirements to ensure that activities in connection with the grant or permit shall not violate applicable air and water quality standards or related facility siting standards established by or pursuant to applicable Federal or State law;

(3) Requirements designed to control or prevent damage to scenic, esthetic, cultural and environmental values (including damage to fish and wildlife habitat), damage to Federal property and hazards to public health and safety;

(4) Requirements to protect the interests of individuals living in the general area who rely on the fish, wildlife and biotic resources of the area for subsistence purposes;

(5) Requirements to ensure that the facilities to be constructed, used and operated on the prescribed location are maintained and operated in a manner consistent with the grant or permit; and

(6) Requirements for compliance with State standards for public health and safety, environmental protection and siting, construction, operation and maintenance when those standards are more stringent than Federal standards.

§ 2801.3 Unauthorized occupancy.

Any occupancy or use of the public lands, other than casual use as set forth in §§ 2800.0–5(m) and 2802.1(d) of this title, without authorization shall be considered a trespass and shall subject the trespasser to prosecution and liability for the trespass. Issuance of a right-of-way grant or temporary use permit to a trespasser shall be made in accordance with § 9239.0–9 of this title, except for those unauthorized uses under § 2802.5 of this title. This provision applies to all unauthorized use of the public lands and precludes the issuance of a right-of-way grant or temporary use permit until the trespass case has been settled. Once the trespass case has been settled, a new grant or permit may be made by the authorized officer in accordance with the procedures set forth in this part.

Subpart 2802—Applications

§ 2802.1 Preapplication activity.

(a) Anyone interested in obtaining a right-of-way grant or temporary use permit involving use of public lands is encouraged to establish early contact with the Bureau of Land Management office responsible for management of the affected public lands so that potential constraints may be identified, the proposal may be considered in land use plans, and processing of an application may be tentatively scheduled. The appropriate officer shall furnish the proponent with guidance and information about:

(1) Possible land use conflicts as identified by review of land use plans, land ownership records and other available information sources;

(2) Application procedures and probable time requirements;

(3) Applicant qualifications;

(4) Cost reimbursement requirements;

(5) Associated clearances, permits and licenses which may be required in addition to, but not in place of the grants or permits required under these regulations;

(6) Environmental and management considerations;

(7) Any other special conditions that can be identified;

(8) Identification of on-the-ground investigations which may be required in order to complete the application; and

(9) Coordination with Federal, State and local government agencies.

(b) Any information furnished by the proponent in connection with a preapplication activity or use which he/she requests not be disclosed, shall be protected to the extent consistent with the Freedom of Information Act (5 U.S.C. 552).

(c) No right-of-way applications processing work, other than that incurred in the processing of applications for permits for temporary use of public lands in furtherance of the filing of an application and pre-application guidance under paragraph (a) of this section, shall be undertaken by the authorized officer prior to the filing of an application together with advance payment as required by § 2803.1–1 of this title. Such processing work includes, but is not limited to, special studies such as environmental analyses, environmental statements, engineering surveys, resource

inventories and detailed land use or record analyses.

(d) The prospective applicant is authorized to go upon the public lands to perform casual acts related to data collection necessary for the filing of an acceptable application. These casual acts or activities include, but are not limited to: (1) vehicle use on existing roads; (2) sampling: (3) marking of routes or sites, including surveying; or (4) other activities that do not unduly disturb the surface or require the removal of vegetation.

If, however, the authorized officer determines that appreciable surface or vegetative disturbance will occur or is a real possibility he shall issue a temporary use permit with appropriate terms, conditions, and special stipulations pursuant to § 2801.2 of this title.

(e) When, during pre-application discussions with the prospective applicant, the authorized officer supplies the prospective applicant with information set out in paragraph (a) of this section, the authorized officer shall also inform appropriate Federal, State and local government agencies that preapplication discussions have begun in order to assure that effective coordination between the prospective applicant and all responsible government agencies is initiated as soon as possible.

§ 2802.2 Application filing activity.

§ 2802.2-1 Application filing.

Applications for a right-of-way grant or temporary use permit shall be filed with either the Area Manager, the District Manager or the State Director having jurisdiction over the affected public lands except:

(a) Applications for Federal Aid Highways shall be filed pursuant to 23 U.S.C. 107, 317, as set out in 43 CFR 2821;

(b) Applications for cost-share roads shall be filed pursuant to 43 CFR 2812;

(c) Applications for oil and gas pipelines shall be filed pursuant to 43 CFR 2880; and

(d) Applications for projects on lands under the jurisdiction of 2 or more administrative units of the Bureau of Land Management may be filed at any of the Bureau of Land Management offices having jurisdiction over part of the project, and the applicant shall be notified where subsequent communications shall be directed.

§ 2802.2-2 Coordination of applications.

Applicants filing with any other Federal department or agency for a license, certificate of public convenience and necessity or any other authorization for a project involving a right-of-way on public lands, shall simultaneously file an application under this part with the Bureau of Land Management for a right-of-way grant. To minimize duplication, pertinent information from the application to such department or agency may be appended or referenced in the application for the right-of-way grant.

§ 2802.3 Application content.

§ 2802.3-1 Applicant qualifications and disclosure.

(a) An applicant for a right-of-way grant or temporary use permit shall be a citizen of the United States, an association of such citizens, organized under the laws of the United States or of any State thereof, a corporation or other business entity organized or licensed under the laws of the United States or of any State thereof, a Federal agency, or a State or local government. Aliens may not acquire or hold any direct or indirect interest in right-of-way grants or temporary use permits except that they may own or control stock in corporations holding right-of-way grants or temporary use permits, if the laws of their country do not deny similar or like privileges to citizens of the United States. If 3 percent or more of any class of the stock of a corporation is held or controlled by aliens who are citizens of a country denying similar or like privileges to United States citizens, its application shall be denied. A right-of-way or temporary use permit shall not be granted to a minor, but either may be granted to legal guardians or trustees of minors in their behalf.

(b) An application by a private corporation shall be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official where the corporation was organized, and a copy of its bylaws, duly certified by the secretary of the corporation.

(c) A corporation, other than a private corporation, shall file a copy of the law under which it was formed and provide proof of organization under the same, and a copy of its bylaws, duly certified by the secretary of the corporation.

(d) When a corporation is doing business in a State other than that in which it is incorporated, it shall submit a certificate from the Secretary of State or other proper official of that State indicating that it has complied with the laws of the State governing foreign corporations to the extent required to entitle the company to operate in such State, and that the corporation is in good standing under the laws of that State.

(e) A copy of the resolution by the board of directors of the corporation or other documents authorizing the filing of the application shall also be filed.

(f) If the corporation has previously filed with the Department the papers required by this subpart, and there have not been any amendments or revisions of the corporation's charter, articles of incorporation or bylaws, the requirements of this subpart may be met in subsequent applications, by specific reference to the previous filing by date, place and case number.

(g) If the applicant is a partnership, association or other unincorporated entity, the application shall be accompanied by a certified copy of the articles of association, partnership agreement, or other similar document creating the entity, if any. The application shall be signed by each partner or member of the entity, unless the entity shows evidence in the form of a resolution or similar document that one member has been authorized to sign in behalf of the others. In the absence of such resolution each partner shall furnish the evidence of qualification which would be required if the partner or member were applying separately.

(h) If the applicant is a State or local government, or agency or instrumentality thereof, the application shall be accompanied by a statement to that effect and a copy of the law, resolution, order, or other authorization under which the application is made.

(i) Each application by a partnership, corporation, association or other business entity shall, upon the request of the authorized officer, disclose the identity of the participants in the entity and shall include where applicable:

(1) The name, address and citizenship of each participant (partner, associate or other);

(2) Where the applicant is a corporation: the name, address, and citizenship of each shareholder owning 3 percent or more of each class of shares, together with the number and percentage of any class of voting shares of the entity which each shareholder is authorized to vote; and

(3) The name, address, and citizenship of each affiliate of the entity. Where an affiliate is controlled by the entity, the application shall disclose the number of shares and the percentage of each class of voting stock of that affiliate owned, directly or indirectly, by the entity. If an affiliate controls the entity, the number of shares and the percentage of each class of voting stock of the entity owned, directly or indirectly, by the affiliate shall be included.

§ 2802.3-2 Technical and financial capability.

The applicant shall furnish evidence satisfactory to the authorized officer that the applicant has, or prior to commencement of construction shall have, the technical and financial capability to construct, operate, maintain and terminate the project for which authorization is requested.

§ 2802.3-3 Project description.

(a) The applicant shall furnish an explanation of how the project will interrelate with existing and future projects and other developments on the public lands.

(b) The project description shall be in sufficient detail to enable the authorized officer to determine:

(1) Its impact on the environment;

(2) Any benefits provided to the public;

(3) The safety of the proposal; and

(4) The specific public lands proposed to be occupied or used.

(c) When required by the authorized officer, the applicant shall also submit the following:

(1) A description of the proposed facility;

(2) An estimated schedule for construction of all facilities together with anticipated manpower requirements for each stage of construction;

(3) A description of the construction techniques to be used; and

(4) A description of the applicant's alternative route considerations.

§ 2802.3–4 Environmental protection plan.

If the authorized officer determines that the issuance of the right-of-way authorization requires the preparation of an environmental statement, the applicant shall submit a plan for the protection and rehabilitation of the environment during construction, operation, maintenance and termination of the project.

§ 2802.3–5 Additional information.

The applicant shall furnish any other information and data required by the authorized officer to enable him/her to make a decision on the application.

§ 2802.3–6 Maps.

(a) The authorized officer may at his/her discretion require the applicant to file a map with the application. When the authorized officer determines not to require a detailed map prepared in accordance with paragraph (b) of this section, the applicant shall attach to the application a map such as a United States Geological Survey Quadrangle map or aerial photograph showing the approximate location of the facility and processing may proceed. Where the application is accepted without a detailed survey map, the applicant shall be notified that a map pursuant to paragraph (b) of this section shall be required prior to the issuance of the grant or permit, or within 60 days of completion of construction, as determined by the authorized officer, except that the authorized officer may waive all or part of the requirements of paragraph (b) of this section for maps for temporary use permits. When the authorization is for use of an existing road controlled by the United States, any map showing said road shall suffice and the requirements of paragraph (b) of this section shall not apply in this situation.

(b) Maps or aerial photographs portraying linear rights-of-way, as a minimum, shall show the following data:

(1) The bearing and distance of the traverse line or the true centerline of the facility as constructed;

(2) At least one tie to a public land survey monument to either the beginning or ending point of the right-of-way. If a public land survey monument is not within a reasonable distance as determined by the authorized officer, the survey shall be tied to either a relatively permanent man-made structure or monument or some prominent natural feature. However, when the right-of-way crosses both public lands and lands other than public lands, each parcel of public land crossed by said right-of-way must be tied to a public land survey monument, or if the map shows a continuous survey from the beginning point to the ending point of the project regardless of land ownership, then only one corner tie at either the initial or terminal point is required;

(3) The exterior limits of the right-of-way and the width thereof;

(4) A north arrow;

(5) All subdivisions of each section or portion thereof crossed by the right-of-way, with the subdivisions, sections, townships, and ranges clearly and properly noted; and

(6) Scale of the map. The map scale shall be such that all of the required information shown thereon is legible.

(c) Maps portraying non-linear or site-type rights-of-way shall include the requirements of paragraphs (b)(4), (5), and (6) of this section. In addition, the map shall show, as a minimum, the following data:

(1) The bearing and distance of each exterior sideline of the site; and

(2) At least one angle point of the survey shall be tied to a public land survey monument, as provided for in paragraph (b)(2) of this section.

(d) In order to facilitate proper management of the public lands and to assist the authorized officer in developing a sound transportation plan, any person or State or local government which has constructed public highways under the authority of R.S. 2477 (43 U.S.C. 932, repealed October 21, 1976), is provided the opportunity to file within 3 years of the effective date of these regulations a map showing the location of all such public highways constructed under R.S. 2477. Maps filed pursuant to this paragraph should, as a minimum, be a county highway map showing all county roads located on the public lands, a State highway map showing State highways located on public land, and in the case of a municipality, a street or road map showing the location of city streets or roads. An individual who has constructed a public road pursuant to R.S. 2477 should, as a minimum, submit a United States Geological Survey Quadrangle showing the location of said road on public land. The submission of such maps depiciting the location of alleged R.S. 2477 highways shall not be conclusive evidence of their existence. Similarly, failure to depict such roads shall not preclude a later finding as to their existence.

§ 2802.4 Application processing.

(a) The authorized officer shall acknowledge, in writing, receipt of the application and initial cost reimbursement payment required by § 2803.1–1 of this title. An application may be denied if the authorized officer determines that:

(1) The proposed right-of-way or permit would be inconsistent with the purpose for which the public lands are managed;

(2) That the proposed right-of-way or permit would not be in the public interest;

(3) The applicant is not qualified;

(4) The right-of-way or permit would otherwise be inconsistent with the act or other applicable laws; or

(5) The applicant does not or cannot demonstrate that he/she has the technical or financial capacity.

(b) Upon receipt of the acknowledgement, the applicant may continue his or her occupancy of the public land pursuant to § 2802.1(d) of this title to continue to gather data necessary to perfect the application. However, if the applicant finds or the authorized officer determines that surface disturbing activities will occur in gathering the necessary data to perfect the application, the applicant shall file an application for a temporary use permit prior to entering into such activities on the public land.

(c) The authorized officer may require the applicant for a right-of-way grant to submit such additional information as he deems necessary for review of the application. All requests for additional information shall be in writing. Where the authorized officer determines that the information supplied by the applicant is incomplete or does not conform to the act or these regulations, the authorized officer shall notify the applicant of these deficiencies and afford the applicant an opportunity to file a correction. Where a deficiency notice has not been adequately complied with, the authorized officer may reject the application or notify the applicant of the continuing deficiency and afford the applicant an opportunity to file a correction.

(d) Prior to issuing a right-of-way grant or temporary use permit, the authorized officer shall:

(1) Complete an environmental analysis in accordance with the National Environmental Policy Act of 1969;

(2) Determine compliance of the applicant's proposed plans with applicable Federal and State laws;

(3) Consult with all other Federal, State, and local agencies having an interest, as appropriate; and

(4) Take any other action necessary to fully evaluate and make a decision to approve or deny the application and

prescribe suitable terms and conditions for the grant or permit.

(e) The authorized officer may hold public meetings on an application for a right-of-way grant or temporary use permit if he determines that such meetings are appropriate and that sufficient public interest exists to warrant the time and expense of such meetings. Notice of public meetings shall be published in the **Federal Register** or in local newspapers or in both.

(f) A right-of-way grant or temporary use permit need not conform to the applicant's proposal, but may contain such modifications, terms, stipulations or conditions, including changes in route or site location on public lands, as the authorized officer determines to be appropriate.

(g) No right-of-way grant or temporary use permit shall be in effect until the applicant has accepted, in writing, the terms and conditions of the grant or permit. Written acceptance shall constitute an agreement between the applicant and the United States that, in consideration of the right to use public lands, the applicant shall comply with all terms and conditions contained in the authorization and the provisions of applicable laws and regulations.

(h) The authorized officer may place a provision in a right-of-way grant requiring that no construction on or use of the right-of-way shall occur until detailed construction or use plans have been submitted to the authorized officer for approval and one or more notices to proceed with that construction or use have been issued by the authorized officer. This requirement may be imposed for all or any part of the right-of-way.

§ 2802.5 Special application procedures.

An applicant filing for a right-of-way within 4 years from the effective date of this subpart for an unauthorized right-of-way that existed on public land prior to October 21, 1976, is not:

(a) Required to reimburse the United States for costs incurred for processing an application and for the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (see § 2803.1–1(a)(1)) which are above the schedule shown in § 2803.1–1(a)(3)(i) of this title.

(b) Required to reimburse the United States for costs incurred incident to a right-of-way for monitoring (the construction, operation, maintenance and termination) of authorized facilities as required in § 2803.1–1(b) of this title.

(c) Required to pay rental fees for the period of unauthorized land use.

Subpart 2803—Administration of Rights Granted

§ 2803.1 General requirements.

§ 2803.1–1 Reimbursement of costs.

(a)(1) An applicant for a right-of-way grant or a temporary use permit shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), before the right-of-way grant or temporary use permit shall be issued under the regulations of this title.

(2) The regulations contained in this subpart do not apply to:

(i) State or local governments or agencies or instrumentalities thereof where the public lands shall be used for governmental purposes and such lands and resources shall continue to serve the general public, except (A) as to right-of-way grants or temporary use permits issued to State or local governments or agencies or instrumentalities thereof or a municipal utility or cooperative whose principal source of revenue is derived from charges levied on customers for services rendered that are similar to services rendered by a profit making corporation or business enterprise, or (B) as to right-of-way grants or temporary use permits issued under section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 180);

(ii) Road use agreements or reciprocal road agreements; or

(iii) Federal agencies.

(3) An applicant shall submit with each application a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way grant or temporary use permit for crossing public lands (e.g., for powerlines, pipelines, roads and other linear uses).

Length	Payments
Less than 5 miles	$50 per mile or fraction thereof
5 to 20 miles	$500
20 miles and over	$500 for each 20 miles or fraction thereof

(ii) Each right-of-way grant or temporary use permit for non-linear uses (e.g. for communication sites, reservoir sites, plant sites, and camp sites)—$250 for each 40 acres or fraction thereof.

(4) When an application is received, the authorized officer shall estimate the costs expected to be incurred by the United States in processing the application. If, in the judgment of the authorized officer, such costs will exceed the payment required by paragraph (a)(3) of this section by an amount which is greater than the cost of maintaining actual cost records for the application review process, the authorized officer shall require the applicant to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(5) Prior to the issuance of a right-of-way grant or temporary use permit, the applicant shall be required to pay additional amounts to the extent the costs of the United States have exceeded the payments required by paragraphs (a)(3) and (4) of this section.

(6) An applicant whose application is denied shall be responsible for administrative and other costs incurred by the United States in processing its application, and such amounts as have not been paid in accordance with paragraphs (a)(3) and (4) of this section shall be due within 30 days of receipt of notice from the authorized officer of the amount due.

(7) An applicant which withdraws its application before a decision is reached on said application is responsible for costs incurred by the United States in processing such application up to the date upon which the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred by the United States in terminating the application review process. Reimbursement of such costs shall be due within 30 days of receipt of notice from the authorized officer of the amount due.

(8) If payment, as required by paragraphs (a)(4) and (b)(3) of this section, exceeds actual costs to the United States, refund may be made by the authorized officer from applicable funds under authority of 43 U.S.C. 1734, or the authorized officer may adjust the next billing to reflect the overpayment previously received. Neither an applicant nor a holder shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States without the prior written approval of the authorized officer.

(9) The authorized officer shall, on request, give an applicant or a prospective applicant an estimate, based on the best available cost information, of the costs which would be incurred by the United States in processing an application. However, reimbursement shall not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(10) When 2 or more applications for right-of-way grants are filed which the

authorized officer determines to be in competition with each other, each applicant shall reimburse the United States according to subparagraphs (3) through (7) of this section, except that those costs which are not readily identifiable with one of the applications, such as costs for portions of an environmental statement that relate to all of the proposals generally, shall be paid by each of the applicants in equal shares.

(11) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such applicant shall be jointly and severally liable for costs under § 2803.1–1 of this title.

(12) When 2 or more noncompeting applications for right-of-way grants are received for what, in the judgment of the authorized officer, is one right-of-way system, all the applicants shall be jointly and severally liable for costs under § 2803.1–1 of this title for the entire system; subject, however, to the provisions of subparagraph (11) of this paragraph.

(13) The regulations contained in § 2803.1–1 of this title are applicable to all applications for right-of-way grants or temporary use permits incident to rights-of-way over the public lands pending on June 1, 1975.

(b)(1) After issuance of a right-of-way grant or temporary use permit for which fees were assessed under paragraph (a) of this section, the holder thereof shall reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved.

(2) Each holder of a right-of-way grant or temporary use permit shall submit within 60 days of the issuance thereof a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way grant or temporary use permit for crossing public lands (e.g., for powerlines, pipelines, roads, and other linear uses).

Length	Payment
Less than 5 miles	$20 per mile or fraction thereof
5 to 20 miles	$200
20 miles and over	$200 for each 20 miles or fraction thereof.

(ii) Each right-of-way grant or temporary use permit (e.g., for communication sites, reservoir sites, plant sites, and camp sites)—$100 for each 40 acres or fraction thereof.

(iii) If a project has the feature of subdivisions (i) and (ii) of this subparagraph in combination, the payment shall be the total of the amounts required by subdivisions (i) and (ii) of this subparagraph.

(3) When a right-of-way grant or temporary use permit is issued, the authorized officer shall estimate the costs, based on the best available cost information, expected to be incurred by the United States in monitoring holder activity. If such costs exceed the payment required by paragraph (b)(2) of this section by an amount which is greater than the costs of maintaining actual costs records for the monitoring process, the authorized officer shall require the holder to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(4) Following termination of a right-of-way grant or temporary use permit, the former holder shall be required to pay additional amounts to the extent the actual costs incurred by the United States have exceeded the payments required by paragraphs (b) (2) and (3) of this section.

§ 2803.1–2 Rental fees.

(a) The holder of a right-of-way grant or temporary use permit, except as provided in paragraphs (b) and (c) of this section, or when waived by the Secretary, shall pay annually, in advance, the fair market rental value as determined by the authorized officer. Said fee shall be based upon the fair market value of the rights authorized in the right-of-way grant or temporary use permit, as determined by appraisal by the authorized officer, provided however, that where the annual fee is $100 or less, an advanced lump-sum payment for 5 years for right-of-way grants and 3 years for temporary use permits may be required. The lump-sum for use and occupancy of lands under these regulations shall not be less than $25.00.

(b) To expedite the processing of any grant or permit pursuant to this part, the authorized officer may establish an estimated rental fee and collect this fee in advance with the provision that upon receipt of an approved fair market value appraisal the advance rental fee shall be adjusted accordingly.

(c) No fee, or a fee less than fair market rental, may be authorized under the following circumstances:

(1) When the holder is a Federal, State or local government or any agency or instrumentality thereof, excluding municipal utilities and cooperatives whose principal source of revenue is customer charges.

(2) When the holder is a nonprofit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise.

(3) When a holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary.

(4) Rental fees may be waived for rights-of-way involving cost share roads and reciprocal right-of-way agreements.

(5) In instances where the applicant holds an outstanding permit, lease, license or contract for which the United States is already receiving compensation, except under an oil and gas lease where the lessee is required to secure a right-of-way grant or temporary use permit under § 2880 of this title, no rental fee shall be charged for the following:

(i) Where the applicant needs a right-of-way grant or temporary use permit within the exterior boundaries of the permit, lease, license or contract area; and

(ii) Where the applicant needs a right-of-way across public lands outside the permit, lease, license or contract area in order to reach said area.

(d) Rental fees may be initiated or adjusted whenever necessary to reflect current fair market value: (1) As a result of reappraisal of fair market values which shall occur at least once every 5 years, or (2) as a result of a change in the holder's qualifications under paragraph (c) of this section. Reasonable notice shall be given prior to imposing or adjusting rental fees pursuant to this paragraph. Decisions on fees are subject to appeal pursuant to § 2804 of this title.

(e) If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to terminate the right-of-way grant. After default has occurred, no structures, buildings or other equipment may be removed from the servient lands except upon written permission from the authorized officer.

§ 2803.1–3 Bonding.

The authorized officer may require the holder of a right-of-way grant or temporary use permit to furnish a bond or other security satisfactory to him, to secure the obligations imposed by the grant or permit and applicable laws and regulations.

§ 2803.1–4 Liability.

(a) Except as provided in paragraph (f) of this section, each holder shall be fully liable to the United States for any damage or injury incurred by the United States in connection with the use and occupancy of the right-of-way or permit area by the holder.

(b) Except as provided in paragraph (f) of this section, holders shall be held to a standard of strict liability for any activity or facility within a right-of-way or permit area which the authorized officer determines, in his discretion, presents a foreseeable hazard or risk of damage or injury to the United States. The activities and facilities to which such standards shall apply shall be specified in the right-of-way grant or temporary use permit. Strict liability shall not be imposed for damage or injury resulting primarily from an act of war, an Act of God or the negligence of the United States. To the extent consistent with other laws, strict liability shall extend to costs incurred by the United States for control and abatement of conditions, such as fire or oil spills, which threaten lives, property or the environment, regardless of whether the threat occurs on areas that are under Federal jurisdiction. Stipulations in right-of-way grants and temporary use permits imposing strict liability shall specify a maximum limitation on damages which, in the judgment of the authorized officer, is commensurate with the foreseeable risks or hazards presented. The maximum limitation shall not exceed $1,000,000 for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred.

(c) In any case where strict liability is imposed and the damage or injury was caused by a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction in which the damage or injury occurred.

(d) Except as provided in paragraph (f) of this section, holders shall be fully liable for injuries or damages to third parties resulting from activities or facilities on lands under Federal jurisdiction in which the damage or injury occurred.

(e) Except as provided in paragraph (f) of this section, holders shall fully indemnify or hold harmless the United States for liability, damage or claims arising in connection with the holder's use and occupancy of rights-of-way or permit areas.

(f) If a holder is a State or local government, or agency or instrumentality thereof, it shall be liable to the fullest extent its laws allow at the time it is granted a right-of-way grant or temporary use permit. To the extent such a holder does not have the power to assume liability, it shall be required to repair damages or make restitution to the fullest extent of its powers at the time of any damage or injury.

(g) All owners of any interest in, and all affiliates or subsidiaries of any holder of a right-of-way grant or temporary use permit, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim cannot be satisfied by the holder.

(h) Except as otherwise expressly provided in this section, the provision in this section for a remedy is not intended to limit or exclude any other remedy.

(i) If the right-of-way grant or temporary use permit is issued to more than one holder, each shall be jointly and severally liable under this section.

§ 2803.2 Holder activity.

(a) If a notice to proceed requirement has been included in the grant or permit, the holder shall not initiate construction, occupancy or use until the authorized officer issues a notice to proceed.

(b) Any substantial deviation in location or authorized use by the holder during construction, operation or maintenance shall be made only with prior approval of the authorized officer under § 2803.6–1 of this title for the purposes of this paragraph, substantial deviation means:

(1) With respect to location, the holder has constructed the authorized facility outside the prescribed boundaries of the right-of-way authorized by the instant grant or permit.

(2) With respect to use, the holder has changed or modified the authorized use by adding equipment, overhead or underground lines, pipelines, structures or other facilities not authorized in the instant grant or permit.

(c) The holder shall notify the authorized officer of any change in status subsequent to the application or issuance of the right-of-way grant or temporary use permit. Such changes include, but are not limited to, legal mailing address, financial condition, business or corporate status. When requested by the authorized officer, the holder shall update and/or attest to the accuracy of any information previously submitted.

(d) If required by the terms of the right-of-way grant or temporary use permit, the holder shall, subsequent to construction and prior to commencing operations, submit to the authorized officer a certification of construction, verifying that the facility has been constructed and tested in accordance with terms of the right-of-way grant or temporary use permit, and in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.

§ 2803.3 Immediate temporary suspension of activities.

(a) If the authorized officer determines that an immediate temporary suspension of activities within a right-of-way or permit area for violation of the terms and conditions of the right-of-way authorization is necessary to protect public health or safety or the environment, he/she may promptly abate such activities prior to an administrative proceeding.

(b) The authorized officer may give an immediate temporary suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee or contractor of the holder, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm an oral order by a written notice to the holder addressed to the holder or the holder's designated agent.

(c) An order of immediate temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(d) Any time after an order of immediate temporary suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(e) The authorized officer may render an order to either grant or deny the request to resume within 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal the denial as if a final order denying the request had been issued by the authorized officer.

§ 2803.4 Suspension and termination of right-of-way authorizations.

(a) If the right-of-way grant or temporary use permit provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon condition, event, or time, the right-of-way authorization shall thereupon automatically terminate by operation of law, unless some other procedure is specified in the right-of-way grant or temporary use permit. The authorized

officer may terminate a right-of-way grant or temporary use permit when the holder requests or consents to its termination in writing.

(b) The authorized officer may suspend or terminate a right-of-way grant or temporary use permit if he determines that the holder is unwilling, unable or has failed to comply with applicable laws or regulations, or any terms, conditions or stipulations of the right-of-way grant or temporary use permit or has abandoned the right-of-way.

(c) Failure of the holder of a right-of-way grant to use the right-of-way for the purpose for which the authorization was issued for any continuous five-year period shall constitute a presumption of abandonment. The holder may rebut the presumption by proving that his failure to use the right-of-way was due to circumstances not within the holder's control.

(d) Before suspending or terminating a right-of-way grant pursuant to paragraph (b) of this section, the authorized officer shall give the holder written notice that such action is contemplated and the grounds therefor and shall allow the holder a reasonable opportunity to cure such noncompliance.

(e) In the case of a right-of-way grant that is under its terms an easement, the authorized officer shall give written notice to the holder of the suspension or termination and shall refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR Part 4. If the Administrative Law Judge determines that grounds for suspension or termination exist and such action is justified, the authorized officer shall suspend or terminate the right-of-way grant.

§ 2803.4–1 Disposition of improvements upon terminations.

Within a reasonable time after termination, revocation or cancellation of a right-of-way grant, the holder shall, unless directed otherwise in writing by the authorized officer, remove such structures and improvements and shall restore the site to a condition satisfactory to the authorized officer. If the holder fails to remove all such structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but the holder shall remain liable for the cost of removal of the structures and improvements and for restoration of the site.

§ 2803.5 Change in Federal jurisdiction or disposal of lands.

(a) Where a right-of-way grant or temporary use permit administered under these regulations traverses public lands that are transferred to another Federal agency, administration of the right-of-way shall, at the discretion of the authorized officer, be assigned to the acquiring agency unless such assignment would diminish the rights of the holder.

(b) Where a right-of-way grant or temporary use permit traverses public lands that are transferred out of Federal ownership, the transfer of the land shall, at the discretion of the authorized officer, include an assignment of the right-of-way, be made subject to the right-of-way, or the United States may reserve unto itself the land encumbered by the right-of-way.

§ 2803.6 Amendments, assignments and renewals.

§ 2803.6–1 Amendments.

(a) Any substantial deviation in location or use as set forth in § 2803.2(b) of this title shall require the holder of a grant or permit to file an amended application. The requirements for the amended application and the filing are the same and shall be accomplished in the manner as set forth in subpart 2802 of this title.

(b) Holders of right-of-way grants issued before October 21, 1976, who find it necessary or are directed by the authorized officer to amend their grants shall comply with paragraph (a) of this section in filing their applications. Upon acceptance of the amended application by the authorized officer an amended right-of-way grant shall be issued. To the fullest extent possible, and when in the public interest as determined from current land use plans and other management decisions, the amended grant shall contain the same terms and conditions set forth in the original grant with respect to annual rent, duration and nature of interest.

§ 2803.6–2 Amendments to existing railroad grants.

(a) An amended application required under § 2803.6–1(a) or (b), as appropriate, shall be filed with the authorized officer for any realignment of a railroad and appurtenant communication facilities which are required to be relocated due to the realignment. Upon acceptance of the amended application by the authorized officer, an amended right-of-way grant shall be issued within 6 months of date of acceptance of the application. The date of acceptance of the application for the purpose of this paragraph shall be determined in accordance with § 2802.4(a) of this title.

(b) Notwithstanding the regulations of this part, the authorized officer may include in the amended grant the same terms and conditions of the original grant with respect to the payment of annual rental, duration, and nature of interest if he/she finds them to be in the public interest and the lands involved are not within an incorporated community and are of approximately equal value.

§ 2803.6–3 Assignments.

Any proposed assignment in whole or in part of any right or interest in a right-of-way grant or temporary use permit acquired pursuant to the regulations of this part shall be filed in accordance with §§ 2802.1–1 and 2802.3 of this title. The application for assignment shall be accompanied by the same showing of qualifications of the assignee as if the assignee were filing an application for a right-of-way grant or temporary use permit under the regulations of this part. In addition, the assignment shall be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the grant to be assigned plus any additional terms and conditions and any special stipulations that the authorized officer may impose. No assignment shall be recognized unless and until it is approved in writing by the authorized officer.

§ 2803.6–4 Reimbursement of cost for assignments.

All filings for assignments made pursuant to this section shall be accompanied by a nonrefundable payment of $50.00 from the assignor. Exceptions for a nonrefundable payment for an assignment are same as in § 2802.1 of this title.

§ 2803.6–5 Renewals of right-of-way grants and temporary use permits.

(a) When a grant provides that it may be renewed, the authorized officer shall renew the grant so long as the project or facility is still being used for purposes authorized in the original grant and is being operated and maintained in accordance with all the provisions of the grant and pursuant to the regulations of this title. Prior to renewing the grant, the authorized officer may modify the grant's terms, conditions, and special stipulations to reflect any new requirements imposed by current Federal and State land use plans, laws, regulations or other management decisions.

(b) When a grant does not contain a provision for renewal, the authorized

officer, upon request from the holder and prior to the expiration of the grant, may renew the grant at his discretion. A renewal pursuant to this section shall comply with the same provisions contained in paragraph (a) of this section.

(c) Temporary use permits issued pursuant to the regulations of this part may be renewed at the discretion of the authorized officer. The holder of a permit desiring a renewal shall notify the authorized officer in writing of the need for renewal prior to its expiration date. Upon receipt of the notice, the authorized officer shall either renew the permit or reject the request.

(d) Renewals of grants and permits pursuant to paragraphs (a), (b) and (c) of this section are not subject to § 2803.1–1 of this title.

(e) Denial of any request for renewal by the authorized officer under paragraphs (b) and (c) of this section shall be final with no right of review or appeal.

Subpart 2804—Appeals.

§ 2804.1 Appeals procedure.

(a) All appeals under this part shall be taken under 43 CFR Part 4 from any final decision of the authorized officer to the Office of the Secretary, Board of Land Appeals.

(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise, and the provisions of 43 CFR 4.21(a) shall not apply to such decisions.

Subpart 2805—Applications for Electric Power Transmission Lines of 66 KV or Above

§ 2805.1 Application requirements.

(a) Each application for authority to construct, work and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 66 kilovolts or higher under this subpart shall be referred to the Secretary of the Department of Energy to determine the relationship of the proposed facility to the power-marketing program of the United States. Where the proposed facility does not conflict with the program of the United States, the authorized officer, upon notification to that effect, shall proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction or utilization of the facility in order to eliminate conflicts with the power-marketing program of the United States, the authorized officer shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application: *Provided, however,* That if increased costs to the applicant result from changes to eliminate conflicts with the power-marketing program of the United States, and it is determined that a right-of-way should be granted, such changes will be required upon equitable contract arrangements with the Secretary of the Department of Energy covering costs and other appropriate factors.

(b) The applicant shall make provision, or bear the reasonable cost, as may be determined by the Secretary of the Department of Energy, of making provision for avoiding inductive or conductive interference between any transmission facility or other works constructed, operated or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line or other communication facilities existing when the right-of-way is authorized or any such installation, line or facility thereafter constructed or operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating conductive interference.

(c) An applicant for a right-of-way for a transmission facility having a voltage of 66 kilovolts or more shall execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) In the event the United States, pursuant to law, acquires the applicant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

(2) The Department of Energy shall be allowed to utilize for the transmission of electric power and energy any surplus capacity of the transmission facility in excess of the capacity needed by the holder in connection with the holder's operations, or to increase the capacity of the transmission facility at the Department's expense and utilize such increased capacity for the transmission of electric power and energy. The utilization of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department of Energy desires to utilize surplus capacity thought to exist in the transmission facility, notification shall be given to the holder, and the holder shall furnish to the Department of Energy within 30 days a certificate stating whether the transmission facility has any surplus capacity not needed by the holder for the transmission of electric power and energy in connection with the holder's operations and, if so, the amount of such surplus capacity.

(ii) Where the certificate indicates that there is no surplus capacity or that the surplus capacity is less than that required by the Department of Energy, the authorized officer may call upon the holder to furnish additional information upon which its certification is based. Upon receipt of such additional information, the authorized officer shall determine whether surplus capacity is available, and if so, the amount of such surplus capacity.

(iii) In order to utilize any surplus capacity determined to be available, or any increased capacity provided by the Department of Energy at its own expense, the Department of Energy may interconnect its transmission facilities with the holder's transmission facility in a manner conforming to approved standards of practice for the interconnection of transmission circuits.

(iv) The expense of interconnection will be borne by the Department of Energy which shall at all times provide and maintain adequate protective equipment to insure the normal and efficient operation of the holder's transmission facilities.

(v) After any interconnection is completed, the holder shall operate and maintain its transmission facilities in good condition, and except in emergencies, shall maintain in a closed position all connections under the holder's control necessary for the transmission of the Department of Energy's power and energy over the holder's transmission facilities. The parties may, by mutual consent, open any switch where necessary or desirable for maintenance, repair or construction.

(vi) The transmission of electric power and energy by the Department of Energy over the holder's transmission facilities shall be effected in such manner as shall not interfere unreasonably with the holder's use of the transmission facilities in accordance with the holder's normal operating standards, except that the Department of Energy shall have the exclusive right to utilize any increased capacity of the transmission facility which has been provided at the Department of Energy's expense.

(vii) The holder shall not be obligated to allow the transmission of electric power and energy by the Department of Energy to any person receiving service from the holder on the date of the filing of the application for grant, other than

statutory preference customers including agencies of the Federal Government.

(viii) The Department of Energy shall pay to the holder an equitable share of the total monthly cost of that part of the holder's transmission facilities utilized by the Department for the transmission of electric power and energy. The payment shall be based on an amount in dollars representing the same proportion of the total monthly cost of such part of the transmission facilities as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's transmission facilities bears to the total capacity in kilowatts of that portion of the transmission facilities. The total monthly cost shall be determined in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission, exclusive of any investment by the Department of Energy in the part of the transmission facilities utilized by the Department.

(ix) If, at any time subsequent to a certification by the holder or determination by the authorized officer that surplus capacity is available for utilization by the Department of Energy, the holder needs the whole or any part of this capacity theretofore certified or determined as being surplus to the needs of the holder, the holder may request the authorized officer to modify or revoke the previous certification or determination by making application to the authorized officer not later than 36 months in advance of the holder's needs. Any modification or revocation of the certification of determination shall not affect the right of the Department of Energy to utilize facilities provided at its expense or available under a contract entered into by reason of the equitable contract arrangements provided for in this paragraph.

(x) If the Department of Energy and the holder disagree as to the existence or amount of surplus capacity in carrying out the terms and conditions of this paragraph, the disagreement shall be decided by a board of three persons composed as follows: The holder and the Department of Energy shall each appoint a member of the board and the two members shall appoint a third member. If the members appointed by the holder and the Department of Energy are unable to agree on the designation of the third member, he shall be designated by the Chief Judge of the United States Court of Appeals of the circuit in which the major share of the facilities involved is located. The board shall determine the issue and its determination, by majority vote, shall be binding on the Department of Energy and the holder.

(xi) As used in this section, the term "transmission facility" includes (a) all types of facilities for the transmission of electric power and energy and facilities for the interconnection of such facilities, and (b) the entire transmission line and associated facilities from substation or interconnection point to substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

(xii) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Department of Energy which agreement shall be concurred in by the Secretary of the Interior.

Subpart 2806—Designation of Right-of-Way Corridors

§ 2806.1 Corridor designation.

(a) The authorized officer may, based upon his/her motion or receipt of an application, designate right-of-way corridors across any public lands in order to minimize adverse environmental impacts and the proliferation of separate rights-of-way. The designation of corridors shall not preclude the granting of separate rights-of-way over, upon, under or through the public lands where the authorized officer determines that confinement to a corridor is not appropriate.

(b) Any existing transportation or utility right-of-way that is capable of accommodating an additional compatible right-of-way may be designated as a right-of-way corridor by the authorized officer without further review. Subsequent right-of-way grants shall, to the extent practical and as determined by the authorized officer, be confined to designated corridors, however, the designation of a right-of-way corridor is not a commitment by the authorized officer to issue right-of-way grants within the corridor. All applications for right-of-way grants, including those within designated corridors, are subject to the procedure for approval set forth in § 2802 of this title.

(c) Upon a determination by the authorized officer and based upon the criteria of § 2806.2 of this title, a right-of-way corridor shall be designated by publication of a notice in the **Federal Register.**

§ 2806.2 Designation criteria.

The locations and boundary designations of right-of-way corridors shall be determined by the authorized officer after a thorough review of:

(a) Federal, State and local land-use plans and applicable Federal and State laws.

(b) Environmental impacts on natural resources including soil, air, water, fish, wildlife, vegetation and on cultural resources.

(c) Physical effects and constraints on corridor placement or rights-of-way placed therein due to geology, hydrology, meteorology, soil or land forms.

(d) Economic efficiency of placing a right-of-way within a corridor, taking into consideration costs of construction, operation and maintenance, and costs of modifying or relocating existing facilities in a proposed corridor.

(e) National security risks.

(f) Potential health and safety hazards to the public lands users and the general public due to materials or activities within the right-of-way corridor.

(g) Engineering and technological compatibility of proposed and existing facilities.

(h) Social and economic impacts of the facilities on public lands users, adjacent landowners and other groups or individuals.

§ 2806.2-1 Procedures for designation.

(a) The authorized officer shall, to the extent practical, designate right-of-way corridors that are consistent with the Bureau of Land Management's land use plans. In making designations, the authorized officer shall consult with Federal, State, and local agencies, local landowners, and other interested user groups in a manner that provides an opportunity for interested parties to express their views and have those views considered prior to corridor designation.

(b) The authorized officer shall take appropriate measures to inform the public of designated utility transportation corridors, so that existing and potential right-of-way applicants, governmental agencies and the general public will be aware of such corridor locations and any restrictions applicable thereto. Public notice of such designations may be given through publication in local newspapers or through distribution of planning documents, environmental impact statements or other appropriate documents.

Subpart 2807—Reservation to Federal Agencies

§ 2807.1 Application filing.

A Federal agency desiring a right-of-way or temporary use permit over, upon, under or through the public lands pursuant to this part, shall apply to the

authorized officer and comply with the provisions of subpart 2802 of this title to the extent that the requirements of subpart 2802 of this title are appropriate for Federal agencies.

§ 2807.1-1 Document preparation.

(a) The right-of-way reservation need not conform to the agency's proposal, but may contain such modifications, terms, conditions or stipulations, including changes in route or site location, as the authorized officer determines appropriate.

(b) All provisions of the regulations contained in this part shall, to the extent possible, apply and be incorporated into the reservation to the Federal agency.

§ 2807.1-2 Reservation termination and suspension.

The authorized officer may suspend or terminate the reservation only in accordance with the terms and conditions of the reservation, or with the consent of the head of the department or agency holding the reservation.

2. The following are deleted: (a) Subpart 2811 of part 2810; (b) Subpart 2822 of part 2820; (c) Part 2840; (d) Part 2850; (e) Part 2860; (f) Part 2870; (g) Part 2890; (h) All appendices to group 2800.

Cecil D. Andrus,

Secretary of the Interior.

June 26, 1980.

[FR Doc. 80-19682 Filed 6-30-80; 8:45 am]

DEPARTMENT OF INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2469]

Grazing Administration and Trespass on Public Lands

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)–315(r)), Section 4 of the Act of August 28, 1937 (43 U.S.C. 1181(d)), and the Federal Land Policy and Management Act of 1976, as amended by the Public Rangelands Improvement Act of 1978, (43 U.S.C. 1701 et seq.).

Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Section 4100.0–3 (b) is revised to read as follows:

§ 4100.0–3 Authority.

* * * * *

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.), provides for the management, protection, development, and enhancement of the public lands and directs the Secretary to manage these lands under principles of multiple use and sustained yield in accordance with land use plans.

* * * * *

2. Section 4110.3–2 (b) is revised to read as follows:

§ 4110.3–2 Decrease in forage.

* * * * *

(b) When authorized grazing use exceeds the amount of forage available and allocated for livestock grazing within an allotment or where reduced grazing use is necessary to facilitate achieving the objectives in the land use plans, the grazing authorized under grazing permits or leases shall be reduced to the livestock grazing capacity. The difference between the authorized grazing use and the grazing preference shall be held in suspension.

* * * * *

3. § 4120.2–3 is amended by revising the introductory paragraph and paragraphs (a)(c), and (f) to read as follows:

§ 4120.2–3 Allotment management plans.

Grazing management may be applied on allotments through the preparation and implementation of allotment management plans which are developed within the framework of the land use plan provided for in § 4110.2–2(a) of this title.

(a) An allotment management plan shall be prepared in careful and considered consultation, cooperation, and coordination with the affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by such an allotment management plan, and when approved by the authorized officer shall be implemented (see § 4100.0–5(c) of this title). The allotment management plan shall include terms and conditions under 4120.2–1 of this title, may include terms and conditions under § 4120.2–2 of this title, and shall prescribe a system of grazing designed to meet specific management objectives. The plan shall include the limits of flexibility within which the permittee or lessee may adjust his/her operation without prior approval of the authorized officer. The plan shall provide for the collection of data that shall be used to evaluate the effectiveness of the system of grazing in achieving the specific objectives.

* * * * *

(c) Allotment management plans may be revised or terminated by the authorized officer after review and careful and considered consultation, cooperation, and coordination with the parties involved.

* * * * *

(f) Decisions which specify that the terms and conditions of allotment management plans are incorporated into grazing permits or leases may be protested and appealed under Subpart 4160 of this title.

4. Section 4130.2(d)(2)(iv) is revised to read as follows:

§ 4130.2 Grazing permits or leases.

* * * * *

(d) * * *

(2) * * *

(iv) Availability of completed land use plans, except that the absence of a completed land use plan shall not be the sole basis for issuing a grazing permit or lease for a term of less than 10 years unless the authorized officer determines on a case-by-case basis that the information to be contained in such land use plan is necessary to determine whether a shorter term should be established;

* * * * *

4a. Section 4130.4–1 is revised to read:

§ 4130.4–1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to any applicant who owns or controls lands which are unfenced and intermingled with public lands when use under such an agreement would be in harmony with the management objectives for the allotment. (b) The lands offered for exchange-of-use shall be within the exterior boundaries of the allotment to be used, except that lands outside such boundaries may be included where it would otherwise meet specific objectives identified in a land use plan or allotment management plan. Existing exchange-of-use grazing agreements involving lands outside the allotment to be used may be continued or renewed where a land use plan or allotment management plan has not been completed. (c) An exchange-of-use grazing agreement may be issued to authorize use of public lands to the extent of the livestock grazing capacity of the lands offered in exchange-of-use. No fee shall be charged for this grazing use. (d) The exchange-of-use grazing agreement may be issued for a term of not more than 10 years. The expiration date of the exchange-of-use agreement may coincide with the expiration date of any grazing permit or lease issued on the allotment in which the lands offered in exchange-of-use is located. If the lands offered in the exchange-of-use agreement are leased the expiration date of the exchange-of-use grazing agreement coincide with the expiration date of this lease not to exceed 10 years. (e) During the term of the exchange-of-use grazing agreement, the Bureau of Land Management shall have management control for grazing purposes of such nonfederally owned or controlled lands under the provisions of this part and may authorize grazing use as deemed appropriate.

James W. Curlin,
Acting Assistant Secretary of the Interior.
July 8, 1980.

[FR Doc. 80–20849 Filed 7–10–80; 8:45 am]

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Circular Distribution List

GPO 857–401

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1880

[Circular No. 2470]

Financial Assistance, Local Governments Entitlement Lands; Payments in Lieu of Taxes

Under the authority of the Act of October 20, 1976 (31 U.S.C. 1601–1607), sections (a)(4) and (b) of the Act of October 17, 1978 (92 Stat. 1319, 1321–1322), and section 106 of the Act of March 27, 1978 (92 Stat. 171), Subpart 1881, Part 1880, Group 1800, Subchapter A, Chapter 2 of Title 43 of the Code of Federal Regulations is amended as set forth below:

PART 1880—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

Subpart 1881—Payments in Lieu of Taxes

1. Section 1881.0–5 is amended, by amending paragraph (b)(1)(iii), by amending paragraphs (c)(1)(iv), and (v), adding new paragraphs (c)(1)(vi), and (vii), by amending paragraph (c)(2)(i), and by revising paragraph (d), all to read as follows:

§ 1881.0–5 Definitions.

* * * * *

(b) * * *

(1) * * *

(iii) Alaskan boroughs in existence on October 20, 1976, and, beginning October 1, 1978, for purposes of payment under section 3 of the Act, a unit of local government in Alaska located outside of boundaries of an organized borough which acts as the collecting and distributing agency for real property taxes.

* * * * *

(c)(1) * * *

(iv) Water resource projects administered by the Bureau of Reclamation or Corps of Engineers;

(v) Dredge disposal areas administered by the Corps of Engineers;

(vi) Beginning October 1, 1978, lands on which are located semiactive or inactive installations, not including industrial installations, retained by the Army for mobilization purposes and for support of reserve component training; or

(vii) Beginning October 1, 1978, lands designated as "reserve areas", which means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Fish and Wildlife Service. For the purpose of these regulations, reserve areas also include lands in Hawaii, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, which were initially administered by the United States through an Act of Congress, Executive Order, Public Land Order or Proclamation of the President and administered, either solely or primarily, by the Secretary through the Service.

(2) * * *

(i) Lands that were owned or administered by a State or unit of local government and which, at the time title was conveyed to the United States, were exempt from payment of real estate taxes. However, beginning October 1, 1978, this exclusion shall not apply to any entitlement land which is or was acquired by a State or unit of local government from private parties for the purpose of donation of such land to the Federal Government and which is or was donated within eight years of the date of acquisition thereof by the State or unit of local government.

(d) "Money transfers" means money or cash payments received by units of local government under the statutes in section 4 of the Act, 31 U.S.C. 1604. The term does not include payments made to a State and distributed by the State directly to a school district or other single or special purpose governmental entities, or payments distributed by the State to the unit of local government which the unit of local government is required by State law to pass on to a school district or other independent single or special purpose governmental entity.

2. Section 1881.1–2 is amended by revising paragraph (d)(2) and adding new paragraph (e) to read as follows:

§ 1881.1–2 Procedures, Section 1 Payments.

* * * * *

(d) * * *

(2) a written certification by a State Auditor, an independent Certified Public Accountant or an independent public accountant, licensed on or before December 31, 1970, that the statements furnished by the Governor or his delegate have been audited in accordance with auditing standards established by the Comptroller General of the United States in *Standards for Audit of Governmental Organizations, Programs, Activities and Functions*, available through Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, and in accordance with the audit guide for payments in lieu of taxes issued by the Department of the Interior. Such audit certifications will be required for statements submitted for the computation of payments authorized by section 1 of the Act for:

(i) payments to be made for fiscal years beginning on or after October 1, 1979; and

(ii) prior fiscal year payments as may be required by the Office of the Inspector General, Department of the Interior.

The Authorized Officer may waive the requirement for audit certifications where information contained in statements furnished by the Governor or his delegate is verified by the General Accounting Office, the Office of the Inspector General, or other qualified Federal Officials, or where such verification is determined to be unnecessary.

(e) The Office of the Inspector General, United States Department of the Interior, will provide appropriate assistance to the Director, Bureau of Land Management to facilitate the implementation and administration of the audit requirements specified in paragraph (d)(2) of this section pursuant to the provisions of sections 4 and 6 of the Inspector General Act of 1978 (92 Stat. 1102–1103, and 1104–1105). The Office of the Inspector General will develop appropriate audit guides to be used by State auditors, independent Certified Public Accountants or an independent public accountant, licensed on or before December 31, 1970, for auditing the statements of the Governors or their delegates and submitting audit certifications specified in paragraph (d)(2) of this section. Copies of the audit guides will be furnished to the Governor or his delegate each year. Questions pertaining to the use or application of this guide should be referred to the Office of Inspector General, U.S. Department of the Interior, Washington, D.C. 20240.

3. Section 1881.1–3 is amended by revising paragraph (b) and adding a new

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Circular Distribution List

paragraph (d) to read as follows:

§ 1881.1-3 Procedures, Section 3 Payments.

* * * * *

(b) Counties receiving payments in excess of $100 shall distribute those payments to affected units of local government and affected school districts, in accordance with section 3 of the Act, within 90 days of the receipt of such payment. Distribution shall be in proportion to the tax revenues assessed and levied by the affected units of local government and school districts in the Federal fiscal year prior to acquisition of the entitlement lands by the Federal Government. The Redwoods Community College District in California shall be considered an affected school district.

* * * * *

(d) In accordance with 106(c) of the Act of March 27, 1978 (92 Stat. 171), payment of the difference, if any, between the amounts actually paid during each of the five fiscal years immediately following the fiscal year in which lands or interests therein were acquired for addition to the Redwoods National Park pursuant to said Act of March 27, 1978, and 1% of the fair market value of such lands and interests therein at the time of their acquisition shall be deferred, unless the amount not paid, or any part of such amount, was not paid due to an insufficiency of appropriated funds, commencing with the sixth fiscal year following acquisition, the amount deferred shall be paid to eligible counties annually in amounts that reflect the limitations of section 3(c)(2) of the Act. Such payments shall be made until the total amount deferred during the first five years has been paid.

Daniel P. Beard,

Acting Assistant Secretary of the Interior.

July 9, 1980.

[FR Doc. 80-21007 Filed 7-14-80; 8:45 am]

GPO 857 - 402

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8340

[Circular No. 2471]

Off-road Vehicles; Licensing

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Taylor Grazing Act (43 U.S.C. 315a), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Endangered Species Act (16 U.S.C. 1531 et seq.), the Act of September 18, 1960, as amended (16 U.S.C. 670 et seq.), the Land and Water Conservation Fund Act (16 U.S.C. 4601–6a), the National Trails System (16 U.S.C. 1241 et seq.), and Executive Order 11644 (37 FR 2877), as amended by Executive Order 11989 (42 FR 26959), Subpart 8341, Part 8340, Group 8300, Subchapter H, Chapter II, Title 43 of the Code of Federal

Regulations is amended as set forth below.

1. Section 8341.1 is amended by revising paragraph (e) to read as follows:

§ 8341.1 Regulations governing use.

* * * * *

(e) No person may operate an off-road vehicle on the public lands without a valid operator's license or learner's permit where required by State or Federal law.

* * * * *

2. Section 8341.1 is amended by deleting paragraph (f) and redesignating paragraphs (g) through (i) as paragraphs (f) through (h) respectively.

Guy R. Martin,

Assistant Secretary of the Interior.

July 11, 1980.

[FR Doc. 80-21318 Filed 7-16-80; 8:45 am]

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Circular Distribution List

GPO 857-403

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[Circular No. 2472]

Use of Helicopters in the Management of Wild Free-Roaming Horses and Burros

Under the authority of the Act of December 15, 1971, as amended (16 U.S.C. 1331 et seq.), commonly referred to as the Wild Free-Roaming Horse and Burro Act, Subpart 4730, Part 4700, Group 4700, Subchapter D, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Subpart 4710 is amended by adding a new § 4710.4 to read as follows:

§ 4710.4 Research.

Research activities in the management of wild free-roaming horses and burros shall be conducted pursuant to a contract entered into between authorized individuals or organizations and the authorized officer.

2. Section 4730.7–2 is amended by adding a new paragraph (c) to read as follows:

§ 4730.7–2 Helicopters.

* * * * *

(c) Notwithstanding any provision of this section, researchers who have entered into contracts with the Bureau of Land Management under the authority of the act may use helicopters in the performance of such research activities without the supervision of the authorized officer; *Provided that:* helicopters permitted for research shall not—

(1) Be used to kill or remove from the public lands wild free-roaming horses or burros; or

(2) Create undue or needless stress in wild free-roaming horses or burros.

James W. Curlin,
Acting Assistant Secretary of the Interior.
July 10, 1980.

[FR Doc. 80–21319 Filed 7–16–80; 8:45 am]

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Circular Distribution List

GPO 857 - 404

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8351

[Circular No. 2473]

Prohibited Acts in Wild and Scenic River Areas

Under the authority of section 10(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1281(c)), Subpart 8351, Part 8350, Group 8300, Subchapter H, Chapter II, Title 43 of the Code of Federal Regulations is amended by adding the following sections as set forth below.

§ 8351.1 Trails [Reserved]

§ 8351.2 Rivers.

§ 8351.2-1 Special rules.

(a) The authorized officer may issue written orders which close or restrict the use of the lands and water surface administered by the Bureau of Land Management within the boundary of any component of the National Wild and Scenic River System when necessary to carry out the intent of the Wild and Scenic Rivers Act. Each order shall:

(1) Describe the lands, road, trail or waterway to which the order applies;

(2) Specify the time during which the closure or restriction applies;

(3) State each prohibition which is applied; and

(4) Be posted in accordance with paragraph (d of this section.)

(b) A written order may exempt any of the following persons from any of the prohibitions contained in the order:

(1) Persons with written permission authorizing the otherwise prohibited act or omission. The authorized officer may include in any written permission such conditions considered necessary for the protection of a person, or the lands or water surface and resources or improvements located thereon.

(2) Owners or lessees of property within the boundaries of the designated wild and secenic river area.

(3) Residents within the boundaries of the designated wild and scenic river area.

(4) Any Federal, State, or local government officer or member of an organized rescue or fire suppression force in the performance of an official duty.

(5) Persons in a business, trade or occupation within the boundaries of the designated wild and scenic river area.

(c) The violation of the terms or conditions of any written permission issued under paragraph (b)(1) of this section is prohibited.

(d) Posting is accomplished by:

(1) Placing a copy of an order in each local office having jurisdiction over the lands affected by the order; and

(2) Displaying each order near and/or within the affected wild and scenic river area in such locations and manner as to reasonably bring the prohibitions contained in the order to the attention of the public.

(e) When provided by a written order, the following are prohibited;

(1) Going onto or being upon land or water surface;

(2) Camping;

(3) Hiking;

(4) Building, maintaining, attending or using a fire;

(5) Improper disposal of garbage, trash or human waste;

(6) Disorderly conduct; and

(7) Other acts that the authorized officer determines to be detrimental to the public lands or other values of a wild and scenic river area.

(f) Any person convicted of violating any prohibition established in accordance with this section shall be punished by a fine not to exceed $500 or by imprisonment for a period not to exceed 6 months, or both, and shall be adjudged to pay all costs of the proceedings.

(16 U.S.C. 1281(c), 16 U.S.C. 3)

James W. Curlin,

Acting Assistant Secretary of the Interior.

July 29, 1980.

[FR Doc. 80-23283 Filed 8-1-80; 8:45 am]

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Circular Distribution List

GPO 858 - 364

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2474]

Grazing Administration and Trespass; Exclusive of Alaska

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)–315(r), Section 4 of the Act of August 28, 1937 (43 U.S.C. 1181(d), and the Federal Land Policy and Management Act of 1976, as amended by the Public Rangelands Improvement Act of 1978, (43 U.S.C. 1701 et seq.), Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Section 4110.3–2 is amended by revising paragraph (c) to read as follows:

§ 4110.3–2 Decrease in forage.

* * * * *

(c) Suspensions under paragraphs (a) or (b) of this section shall be equitably apportioned by the authorized officer or as agreed to among permittees or lessees and the authorized officer. If consistent with resource management needs, the authorized officer may provide that the suspensions under paragraph (b) of this section be scheduled over a period not to exceed 3 years with the full suspension coming in the last year.

Daniel P. Beard,

Acting Assistant Secretary of the Interior.

August 6, 1980.

[FR Doc. 80–24103 Filed 8–8–80; 8:45 am]

Published in 45 F.R. 53154 August 11, 1980 - Effective August 11, 1980.

Circular Distribution List

GPO 858 - 365

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

[Circular No. 2475]

Rights-of-Way Under the Mineral Leasing Act; Amendment to the Definitions Section

Under the authority of section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Section 2880.0–5, Subpart 2880, Part 2880, Group 2800, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Section 2800.0–5 is amended by revising existing paragraphs (i) and (k), inserting a new paragraph (l), and renumbering existing paragraphs (l) through (n) as paragraphs (m) through (o) respectively.

§ 2880.0–5 Definitions.

As used in this part, the term:

* * * * *

(i) "Pipeline" means a line of traversing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on his lease.

* * * * *

(k) "Production facilities" means a lessee's or lease operator's pipes and equipment used on his lease solely to aid in his extraction, storage, and processing of oil and gas. The term includes storage tanks and processing equipment, and gathering lines upstream from such tanks and equipment, or in the case of gas, upstream from the point of delivery. The term also includes pipes and equipment, such as water and gas injection lines, used in the production process for purposes other than carrying oil and gas downstream from the wellhead.

(l) "Related facilities" means those structures, devices, improvements, and sites, the substantially continuous use of which is necessary for the operation or maintenance of a pipeline, which are located on Federal lands, and which are authorized under the Act, including but not limited to: supporting structures; airstrips; roads; campsites; pump stations, including associated heliports, structures, yards, and fences; valves, and other control devices; surge and storage tanks; bridges; monitoring and communication devices and structures housing them; terminals, including structures, yards, docks, fences, and storage tank facilities; retaining walls, berms, dikes, ditches, cuts, and fills; structures and areas for storing supplies and equipment. Related facilities may be connected or nonconnected or contiguous or noncontiguous to the pipe.

* * * * *

James W. Curlin,
Acting Assistant Secretary of the Interior.
September 5, 1980.

[FR Doc. 80–27948 Filed 9–10–80; 8:45 am]

Published in 45 F.R. 59879 September 11, 1980 - Effective October 14, 1980.

Circular Distribution List

GPO 858 – 232

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

[Circular No. 2475]

Rights-of-Way Under the Mineral Leasing Act; Amendment to the Definitions Section

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This amendment to the definitions section will clear up a procedural conflict between the Bureau of Land Management and the U.S. Geological Survey as to which agency handles the issuance of permits for those pipelines and related facilities owned by the lessee or lessee's operator which are located on the lease area and which are used for the sole benefit of the lessee or lessee's operator's production, collection or processing of oil and gas produced on the lease.

EFFECTIVE DATE: October 14, 1980.

ADDRESS: Any inquiries or suggestions should be sent to: Director (330), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Orval L. Hadley, 202 343-5537.

SUPPLEMENTARY INFORMATION: After publication of the final rulemaking on the subject of Rights-of-way Under the Mineral Leasing Act in the Federal Register on October 9, 1979 (44 FR 56126), questions were raised about the issuance of permits for those pipelines and other related facilities owned by the lessee or lessee's operator which are located on the lease area and which are used for the sole benefit of the lessee or lessee's operator's production, collection and processing of oil and gas produced on the lease. These questions were the result of several comments received during the comment period questioning the inclusion of gathering lines in the definition of the term "pipeline." The final rulemaking gave this responsibility to the Bureau of Land Management, although the U.S. Geological Survey had exercised the responsibility in the past. It was thought at the time that the change in responsibility was required by amendments to the Mineral Leasing Act. This change in the regulations caused concern on the part of members of the public who felt that the new system might cause delays in the development of oil and gas leases. This concern caused the Office of the Solicitor to carefully research the Mineral Leasing Act, as amended, to determine if the definition for the term "pipeline" as set forth in the final rulemaking was correct, or whether the term should be defined otherwise. The Office of the Solicitor issued an opinion on June 19, 1980, in which it was concluded that "* * * section 28 of the Mineral Land Leasing Act does not apply to on-lease production facilities which are included in a surface use and operations plan, and which are authorized by the approval of an application to conduct leasehold operations or construction activities. We believe that a reasonable dividing point between 'production' and 'transportation' is the point at which the lease operator completes his final processing or storage of the product, or in the case of gas, the point of delivery to the transportation pipeline." The opinion then went on to state "(O)ff-lease facilities, regardless of their nature, on-lease oil and gas transportation facilities, and on-lease 'commercial' facilities * * * can be authorized only by an appropriate right-of-way grant".

The regulations issued on October contained a provision including "gathering lines" in the definition of "pipeline" only because it was believed that this was required by statute. Thus, a decision was made to amend the regulations in the form now being published as soon as we learned that there was in fact no such statutory requirement. The subject of this amendment was an issue in the October rulemaking. There was a full 60-day comment period prior to the issuance of that final rulemaking. This amendment is in response to comments received during the comment period. For these reasons, it has been determined that publication of this amendment in proposed form, with an additional comment period, is unnecessary. In addition, the procedure set forth in the October 9, 1979, regulations has not yet been widely implemented in the field. The procedure which the October regulations replaced, and which is reinstated by this amendment, has been in use for a number of years by the Department of the Interior. For this reason, this amendment is a procedural change which should have no significant impact on the public.

It is determined that publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Section 2880.0-5, Subpart 2880, Part 2880, Group 2800, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

James W. Curlin,

Acting Assistant Secretary of the Interior.

September 5, 1980.

1. Section 2880.0-5 is amended by revising existing paragraphs (i) and (k), inserting a new paragraph (l), and renumbering existing paragraphs (l) through (n) as paragraphs (m) through (o) respectively.

§ 2880.0-5 Definitions.

As used in this part, the term:

* * * * *

(i) "Pipeline" means a line of traversing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on his lease.

* * * * *

(k) "Production facilities" means a lessee's or lease operator's pipes and equipment used on his lease solely to aid in his extraction, storage, and processing of oil and gas. The term includes storage tanks and processing equipment, and gathering lines upstream from such tanks and equipment, or in the case of gas, upstream from the point of delivery. The term also includes pipes and equipment, such as water and gas injection lines, used in the production process for purposes other than carrying oil and gas downstream from the wellhead.

(l) "Related facilities" means those structures, devices, improvements, and sites, the substantially continuous use of which is necessary for the operation or maintenance of a pipeline, which are located on Federal lands, and which are authorized under the Act, including but not limited to: supporting structures; airstrips; roads; campsites; pump stations, including associated heliports, structures, yards, and fences; valves, and other control devices; surge and storage tanks; bridges; monitoring and communication devices and structures housing them; terminals, including structures, yards, docks, fences, and storage tank facilities; retaining walls, berms, dikes, ditches, cuts, and fills; structures and areas for storing supplies and equipment. Related facilities may be connected or nonconnected or contiguous or noncontiguous to the pipe.

* * * * *

[FR Doc. 80-27948 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

[Circular No. 2476]

Amendment to Regulations on Management of Oil and Natural Gas Pipelines and Related Facilities on Federal Lands and Reimbursement of Costs

SUPPLEMENTARY INFORMATION: After the final rulemaking on Oil and Natural Gas Pipelines under section 28 of the Mineral Leasing Act was published in the **Federal Register** (44 FR 58126), the final rulemaking was published (FR 58106) on Management of Rights-of-Way and Related Facilities on Public Lands and Reimbursement of Costs under Title V of the Federal Land Policy and Management Act. The regulations covering oil and gas pipelines refer to the cost reimbursement provisions that were in effect at the time of their publication. The new right-of-way regulations promulgated under Title V of the Federal Land Policy and Management Act (43 CFR Part 2800) include the sections covering cost reimbursement and renumbered those sections. As a result, the references in the oil and gas pipeline regulations published on October 9, 1979, were inconsistent with the numbering on the new regulations. This final rulemaking makes them consistent.

The amendments are as follows:

1. On page 58129, amendatory paragraph number 2 that redesignates Subpart 2883 to Subpart 2888 is in error and should be deleted in its entirety.

2. Part 2880 is amended as follows:

§ 2882.1 [Amended]

a. On page 58132, § 2882.1(c), the reference to § 2802.1–2 is incorrect and is amended to read § 2803.1–1.

§ 2883.1–1 [Amended]

b. On page 58134, § 2883.1–1, the reference to § 2802.1–2 is incorrect and is amended to read § 2803.1–1.

§ 2883.1–2 [Amended]

c. On page 58134, § 2883.1–2, the reference to § 2802.1–7(b) is incorrect and is amended to read § 2803.1–2.

James W. Curlin,

Acting Assistant Secretary of the Interior.

September 23, 1980.

[FR Doc. 80–29832 Filed 9–26–80; 8:45 am]

Published in 45 F.R. 64177, September 29, 1980 - Effective September 29, 1980.

Circular Distribution List

GPO 858–504

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3300

[Circular No. 2477]

Amendments to the Outer Continental Shelf Minerals and Rights-of-Way Management, General Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking makes technical and procedural changes to the regulations on Outer Continental Shelf Minerals and Rights-of-way Management. The changes are necessary to conform Part 3300 with either Department of Energy regulations or Outer Continental Shelf Lands Act, as amended. These changes will clarify the existing Part 3300 and bring it into conformance with applicable portions of the Department of Energy's regulations.

EFFECTIVE DATE: October 17, 1980.

ADDRESS: Any recommendations or inquiries should be sent to: Director (540), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:
William Quinn, (202) 343–5121
or
Gerard F. Fuda, (202) 343–5121.

SUPPLEMENTARY INFORMATION: This final rulemaking makes three procedural changes in Part 3300 which relate to the Outer Continental Shelf Minerals and Rights-of-Way Management, General. These changes do not impose any additional requirements on the impacted public and implement through Part 3300 requirements that currently exist in Department of Energy regulations.

The first change covers regulations controlling the joint bidding procedure. Authority to issue regulations controlling joint bidding was transferred from the Secretary of the Interior to the Secretary of Energy pursuant to section 302(b) of the Department of Energy Organization Act (42 U.S.C. 1701 et seq.). Joint bidder regulations are now contained in 10 CFR 376. However, the administration of Federal leases on the Outer Continental Shelf is the responsibility of the Secretary of the Interior and the reporting requirements pertaining to them are contained in subpart 3316 of Title 43 of the Code of Federal Regulations. It is necessary that the regulations in subpart 3316 be consistent with the recently published Department of Energy regulations on joint bidding contained in 10 CFR Part 376 (45 FR 62029) and this change accomplishes that aim.

The change eliminates the current requirement in subpart 3316 for all joint bidders to file statements of production with the Bureau of Land Management. The filing requirements will apply only to those companies who wish to submit joint bids and who are chargeable with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquefied petroleum products.

The second change covers payment of rentals for Outer Continental Shelf leases issued under the fixed net profit sharing bidding system. The Department of Energy has the responsibility for establishing bidding systems while the Department of the Interior retains the responsibility for administering those systems in connection with the issuance and maintenance of leases. As a result of the issuance of a final rulemaking by the Department of Energy establishing a fixed net profit share bidding system at 10 CFR Parts 376 and 390 (45 FR 36784), the regulations in subpart 3317 are being changed to make them consistent with the Department of Energy regulations.

The third change is being made to subpart 3340, Grants of Pipeline Rights-of-Way on the Outer Continental Shelf. The change will bring subpart 3340 into conformance with the language of section 5(f) of the Outer Continental Shelf Land Act, as amended (43 U.S.C. 1334(f)). Section 5(f)(2) authorizes the Federal Energy Regulatory Commission to exempt certain pipelines on the Outer Continental Shelf from the requirement of complying with the competitive principles of section 5(f)(1). Section 5(e) authorizes the Secretary of the Interior to grant rights-of-way for pipelines on the Outer Continental Shelf. Subpart 3340 of Title 43 of the Code of Federal Regulations published on June 29, 1979 (44 FR 38268), does not fully reflect the language of the Act with respect to responsibilities of the Federal Energy Regulatory Commission. This change, developed in conjunction with the Federal Energy Regulatory Commission, assures consistency with the authorities of that agency pursuant to section 5(f)(2) of the Act. It is the responsibility of the applicant for a right-of-way to comply with the requirements imposed by the Federal Energy Regulatory Commission.

This rulemaking is being issued as a final rulemaking because the changes made by it are technical and make only procedural changes in the existing regulations. The joint bidding change brings these regulations into agreement with regulations already promulgated by the Department of Energy. Likewise, the change in rental payments for leases issued under the fixed net-profit share bidding system is necessary to make section 3317.1 consistent with the Department of Energy regulations (10 CFR 390, 45 FR 36784) which established the system and current practice with regard to rental payments on oil and gas leases issued under other bidding systems.

The final change more accurately reflects the language of the Outer Continental Shelf Lands Act, as amended, as it pertains to the authorities of the Federal Energy Regulatory Commission. The changes impose no new requirements to the procedure contained in part 3300. For these reasons, the changes are being adopted in final form without first being published in proposed form.

The principal authors of this rulemaking are Mr. William Quinn and Mr. Gerard F. Fuda, Division of Offshore Resources, assisted by the staff of the Office of Legislation and Regulatory Management, both of the Bureau of Land Management.

It is hereby determined that the publication of this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.), Part 3300, Group 3300, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

James W. Curlin,
Acting Assistant Secretary of the Interior.
October 10, 1980.

1. Section 3316.3–2(a) is revised to read as follows:

§ 3316.3–2 Joint bidding requirements.

(a) Any person who submits a joint bid for any oil and gas lease during a 6-month bidding period, and who was chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products, shall have filed under oath with the Director, a Statement of Production of crude oil, natural gas and liquified petroleum products, hereinafter referred to as a Statement of Production, no later than 45 days prior to the

ommencement of the applicable 6-
nonth bidding period of May 1 through
October 31, and November 1 through
0. Statements of Production shall
mitted to the Director, Bureau of
and Management (Attention: 541),
Washington, D.C. 20240. The Statement
f Production shall indicate that the
erson was chargeable, in accordance
vith § 3316.3–3 of this title, with an
verage daily production in excess of 1.6
illion barrels of crude oil, natural gas
nd liquified petroleum products for the
ior production period. The Director
all publish semi-annually in the
deral Register a "List of Restricted
int Bidders" to be effective
mediately upon publication and to
ntinue in force and effect until a
bsequent list is published. The "List of
stricted Joint Bidders" shall consist of
se persons, who in the judgment of
Director, based on information
ailable to him, including, but not
ited to, sworn Statements of
duction, are chargeable under
316.3–3 of this title with an average
ly production in excess of 1.6 million
rels of crude oil, natural gas and
ified petroleum products for the prior
duction period.

* * * *

Section 3316.3–4 (b), (c)(4) and (d)
revised to read as follows:

Bids disqualified.

* * *

) A joint bid submitted by two or
persons when 1 or more of those
ons is chargeable for the prior
uction period with an average daily
uction in excess of 1.6 million
ls of crude oil, natural gas and
ied petroleum products and has not
a Statement of Production as
red by § 3316.3–2 of this title for the
cable 6-month bidding period, or (2)
f those persons have failed or
d to file a detailed report of
ction when required to do so under
.4(h) of this title, or

* *

or any of the types of
yances described in paragraphs
(2) or (3) of this section where any
o the conveyance is chargeable
prior production period with an
e daily production in excess of 1.6
barrels of crude oil, natural gas
uified petroleum products and
filed a Statement of Production
t to § 3316.3–2 of this title for the
ble 6-month bidding period.
nents expressly required by law,
on, lease or stipulation to lease
disqualify an otherwise
d bid or
mitted by or in
h a person who has filed
a false, fraudulent or otherwise intentionally false or misleading detailed Report of Production.

3. Section 3316.4(h)(2) is revised to read as follows:

§ 3316.4 Submission of bids.

* * * * *

(h) * * *

(2) permit the inspection and copying by an official of the Department of the Interior of such documents, records of production of crude oil, natural gas and liquified petroleum products, analyses and other material as are necessary to demonstrate the accuracy of any statement or information contained in any Report of Production.

* * * * *

4. Section 3317.1 (a), (b) and (e) are revised to read as follows:

§ 3317.1 Rentals.

(a) Except for leases issued subject to fixed-net profit sharing provisions, an annual rental shall be due and payable in advance, at the rate specified in the oil and gas leases, on the first day of each lease year prior to discovery of oil or gas on the lease.

(b) The owner of any lease created by the segregation of a portion of a producing lease which is not subject to fixed net profit sharing provisions and on which segregated portion there is no production, actual or allocated, shall pay an annual rental for such segregated portion at the rate per acre or hectare specified in the lease. This rental shall be payable each lease year following the year in which the segregation became effective and prior to a discovery on such segregated portion.

* * * * *

(e) For leases issued subject to the fixed net profit sharing provisions, annual rental payments shall be due and payable in advance, on the first day of each lease year which commences prior to the date the first profit share payment becomes due. The owner of any lease created by the segreation of a portion of a lease subject to fixed net profit sharing provisions, shall pay an annual rental for such segregated portion at the rate per acre or hectare specified in the lease. This rental shall be payable each year following the year in which the segregation becomes effective and shall continue to be due and payable, in advance, on the first day of each year which commences prior to the date the first profit share payment becomes due.

5. Section 3340.1(a)(ii) is revised to read as follows:

§ 3340.1 Nature of grant.

(a) * * *

(11) Unless otherwise exempted by the Federal Energy Regulatory Commission pursuant to section 5(f)(2) of the act, the holder shall provide open and nondiscriminatory access to the pipelines to both owner and nonowner shippers.

[FR Doc. 80-32354 Filed 10-16-80; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2650

[Circular No. 2478]

Federal Installations; Implementation of Section 3(e) of the Alaska Native Claims Settlement Act

Under the authority of the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.), a new Subpart 2655 is added to Part 2650, Group 2600, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations as set forth below.

Subpart 2655—Federal Installations

Sec.

2655.0–3 Authority.
2655.0–5 Definitions.
2655.1 Lands subject to determination.
2655.2 Criteria for determinations.
2655.3 Determination procedures.
2655.4 Adverse decisions.

Authority: Alaska Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.).

Subpart 2655—Federal Installation

§ 2655.0–3 Authority.

Section 3(e)(1) of the act provides that the Secretary shall determine the smallest practicable tract enclosing land actually used in connection with the administration of Federal installations in Alaska.

§ 2655.0–5 Definitions.

As used in this subpart, the term:

(a) "Holding agency" means any Federal agency claiming use of a tract of land subject to these regulations.

(b) "Appropriate selection period" means the statutory or regulatory period within which the lands were available for Native selection under the act.

(c) "State Director" means the Director, Alaska State Office, Bureau of Land Management.

§ 2655.1 Lands subject to determination.

(a) Holding agency lands located within areas withdrawn by sections 11(a)(1), 16(a), or 16(d) of the act and subsequently selected by a village or regional corporation under sections 12 or 16, or selected by the regional corporation under sections 12 or 16, or selected by the regional corporation for southeast Alaska in accordance with section 14(h)(8)(B) are subject to a determination made under this subpart.

(b) Lands in the National Park System, lands withdrawn or reserved for national defense purposes and those former Indian reserves elected under section 19 of the act are not subject to a determination under section 3(e)(1) of the act or this subpart. Lands withdrawn under section 11(a)(3) or 14(h), except 14(h)(8)(B), of the act do not include lands withdrawn or otherwise appropriated by a Federal agency and, therefore, are not subject to a determination under section 3(e)(1) of the act of this subpart.

§ 2655.2 Criteria for determinations.

Land subject to determination under section 3(e)(1) of the act will be subject to conveyance to Native corporations if they are determined to be public lands under this subpart. If the lands are determined not to be public lands, they will be retained by the holding agency. The Bureau of Land Management shall determine:

(a) Nature and time of use.

(1) If the holding agency used the lands for a purpose directly and necessarily connected with the Federal agency as of December 18, 1971; and

(2) If use was continuous, taking into account the type of use, throughout the appropriate selection period; and

(3) If the function of the holding agency is similiar to that of the Federal agency using the lands as of December 18, 1971.

(b) Specifications for area to be retained by Federal agency.

(1) Area shall be no larger than reasonably necessary to support the agency's use.

(2) Tracts shall be described by U.S. Survey (or portion thereof), smallest aliquot part, metes and bounds or protraction diagram, as appropriate.

(3) Tracts may include:

(i) Improved lands;

(ii) Buffer zone surrounding improved lands as is reasonably necessary for purposes such as safety measures, maintenance, security, erosion control, noise protection and drainage;

(iii) Unimproved lands used for storage;

(iv) Lands containing gravel or other materials used in direct connection with the agency's purpose and not used simply as a source of revenue or services. The extent of the areas reserved as a source of materials will be the area disturbed but not depleted as of the date of the end of the appropriate selection period; and

(v) lands used by a non-governmental entity or private person for a use that has a direct, necessary and substantial connection to the purpose of the holding agency but shall not include lands from which proceeds of the lease, permit, contract, or other means are used primarily to derive revenue.

(c) Interest to be retained by Federal agency.

(1) Generally, full fee title to the tract shall be retained; however, where the tract is used primarily for access, electronic, light or visibility clear zones or right-of-way, an easement may be reserved in lieu of full fee title where the State Director determines that an easement affords sufficient protection, that an easement is customary for the particular use and that it would further the objectives of the act.

(2) Easements reserved in lieu of full fee title shall be reserved under the provisions of section 17(b) of the act and § 2650.4–7 of this title.

§ 2655.3 Determination procedures.

(a) The State Director shall make the determination pursuant to the provisions in this subpart. Where sufficient information has not already been provided, the State Director shall issue written notice to any Federal agency which the Bureau of Land Management has reason to believe might be a holding agency. The written notice shall provide that the information requested be furnished in triplicate to the State Director within 90 days from the receipt of the notice. Upon receipt of information the State Director will promptly provide affected Native corporations with copies of the documents. Upon adequate and justifiable showing as to the need for an extension by the holding agency, the State Director may grant a time extension up to 60 days to provide the information requested in this subpart.

(b) The information to be provided by the holding agency shall include the following for each tract which is subject to determination:

(1) The function and scope of the installation;

(2) A plottable legal description of the lands used;

(3) A list of structures or other alterations to the character of lands and their function, their location on the tract, and date of construction;

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Circular Distribution List

(4) A description of the use and function of any unaltered lands;

(5) A list of any rights, interests or permitted uses the agency has granted to others, including other Federal agencies, along with dates of issuance and expiration and copies of any relevant documents;

(6) If available, site plans, drawings and annotated aerial photographs delineating the boundaries of the installation and locations of the areas used; and

(7) A narrative explanation stating when Federal use of each area began; what use was being made of the lands as of December 18, 1971; whether any action has taken place between December 18, 1971, and the end of the appropriate selection period that would reduce the area needed, and the date this action occurred.

(c) The State Director shall request comments from the selecting Native corporation relating to the identification of lands requiring a determination. The period for comment by the Native corporation shall be as provided for the agency in § 2655.3(a) of this title, but shall commence from the date of receipt of the latest copy of the holding agency's submission.

(d) The holding agency has the burden of proof in proceedings before the State Director under this subpart. A determination of the lands to be retained by the holding agency under section 3(e) of the act and this subpart shall be made based on the information available in the case file. If the holding agency fails to present adequate information on which to base a determination, all lands selected shall be approved for conveyance to the selecting Native corporation.

(e) The results of the determination shall be incorporated into appropriate decision documents.

§ 2655.4 Adverse decisions.

(a) Any decision adverse to the holding agency or Native corporation shall become final unless appealed to the Alaska Native Claims Appeal Board in accordance with 43 CFR Part 4, Subpart J. If a decision is appealed, the Secretary may take personal jurisdiction over the matter in accordance with 43 CFR Part 4.5. In the case of appeals from affected Federal agencies, the Secretary may take jurisdiction upon written request from the appropriate cabinet level official. The requesting official, the State Director and any affected Native corporation shall be notified in writing of the Secretary's decision regarding the request for Secretarial jurisdiction and the reasons for the decision shall be communicated in writing to the requesting agency and any other parties to the appeal.

(b) When an appeal to a decision to issue a conveyance is made by a holding agency or a Native corporation on the basis that the Bureau of Land Management neglected to make a determination pursuant to section 3(e)(1) of the act, the matter shall be remanded by the Alaska Native Claims Appeals Board to the Bureau of Land Management for a determination pursuant to section 3(e)(1) of the act and these regulations: *Provided,* That the holding agency or Native corporation has reasonably satisfied the Board that its claim is not frivolous.

Guy R. Martin,
Assistant Secretary of the Interior.
October 17, 1980.

[FR Doc. 80-32856 Filed 10-21-80; 8:45 am]

GPO 858 - 917

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2650

[Circular No. 2478]

Federal Installations; Implementation of Section 3(e) of the Alaska Native Claims Settlement Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides the procedures to be used by the Secretary of the Interior to carry out the provisions of section 3(e) of the Alaska Native Claims Settlement Act. The procedure will be used to determine which lands held by Federal departments or agencies were in actual use during the time prescribed in the Act and which such lands were not in actual use and can be conveyed to Native Corporations under the Act.

EFFECTIVE DATE: November 21, 1980.

FOR FURTHER INFORMATION CONTACT:
Beaumont McClure, (202) 343–6511
or
Robert C. Bruce, (202) 343–8735
or
Robert Arnold, Bureau of Land Management, 701 C Street, Box 3, Anchorage, Alaska 99513, (907) 271–5760.

SUPPLEMENTARY INFORMATION: On September 18, 1979, proposed rulemaking was published in the **Federal Register** (44 FR 54254). Comments were invited for 60 days ending November 19, 1979. Written responses were received from the State of Alaska, the Department of Transportation, the Alaska Railroad, Alaska Federation of Natives, Inc., Bering Straits Native Corporation, Bristol Bay Native Corporation, Calista Corporation, Choggiung, Chugach Natives, Inc., Eklutna Inc., Galena, Gana-a' yoo, Ltd., Holy Cross, Koniag, Inc., Interior Village Association, Northway, Sealaska Corporation, Unalakleet Native Corporation and Yak-Tat Kwaan, Inc. These responses have been reviewed and analyzed.

Generally, those who commented expressed the opinion that the proposed rulemaking was necessary in order to carry out the Congressional intent of section 3(e) of the Alaska Native Claims Settlement Act. This rulemaking sets up the general guidelines under which the Department of the Interior will determine which lands held by Federal agencies are available for conveyance to Native corporations under this part. It is important to note that the status of each tract will be addressed by the Bureau of Land Management on a case-by-case basis. It is impossible in one rulemaking to take into account all of the individual issues which could affect section 3(e) determinations. For this reason, the final rulemaking does not contain specific examples.

The comments also recommended specific changes that would make the final rulemaking clearer and more understandable. The following discussion summarizes the comments and suggestions received on a section-by-section basis.

Authority

It was suggested that the word "certain" be deleted from the phrase "certain Federal installations in Alaska" as it appeared in the proposed rulemaking. As explained in the section on "lands subject to determination", the provisions of section 3(e) of the Alaska Native Claims Settlement Act and this rulemaking apply to Federal installations located within areas withdrawn by sections 11(a)(1), 16(a), or 16(d) or selected in accordance with section 14(h)(8)(B). Since the Federal lands subject to determination are specifically identified in the final rulemaking, the word "certain" has been deleted.

Definitions

This section received the largest number of comments, generally suggesting that the definitions were incomplete or unclear. After careful analysis and in response to comments, the definitions section of the final rulemaking defines three terms—"holding agency", "appropriate selection period" and "State Director". Other terms which appeared in the definitions section of the proposed rulemaking are now contained in a new section, "Criteria for determination". The term "smallest practicable tract" is contained in the Authority section, which uses that term as it is used in the Alaska Native Claims Settlement Act.

A definition of the term "holding agency" has been added. The term was added in response to a comment that the agency actually controlling the lands may not necessarily be the agency which was using the lands on December 18, 1971. The term "Federal installation" as used in the proposed regulations defined the lands subject to determination and is now addressed in the section on "Criteria for determination".

The term "appropriate selection period" was added as suggested by one comment, in order to avoid the questions raised by § 2655.1(c) (1), (2) and (3) in the proposed rulemaking, which listed specific time periods for selection. Since the Alaska Native Claims Settlement Act itself, its implementing regulations and subsequent congressional enactments, list the appropriate selection periods for Native corporations, it is unnecessary to include that information in this final rulemaking. This will avoid amending the regulations each time Congress acts on selection periods. The third definition added to the final rulemaking is "State Director" which means Director, Alaska State Office, Bureau of Land Management.

Lands Subject to Determination

This section of the proposed rulemaking drew a few comments which pointed out three omissions in the first paragraph of the section. First, there is no mention of Federal department or agency lands located within the areas withdrawn; second, the withdrawal authorities cited should include section 16(d) of the Alaska Native Claims Settlement Act; and third, there is no reference in the paragraph to selections made by the regional corporation for southeast Alaska under section 14(h)(8)(B) of the Act. These omissions have been corrected. The final rulemaking does not include a reference to section 11(a)(3) of the Act as suggested in some comments. This change is not appropriate since determinations pursuant to section 3(e) of the Act do not apply to lands withdrawn under section 11(a)(3). As explained above, several comments questioned the need for stating specific selection periods and this has been deleted.

Criteria for Determination

This section has been added to further clarify the procedures for making a determination and clarify some of the misunderstanding expressed in the comments on the definitions section. Almost all of the comments found the definitions section of the proposed rulemaking unclear. Therefore, the final rulemaking has been redrafted to reflect the three criteria which the Bureau of Land Management will use in order to make a 3(e) determination as to whether the lands are public lands and, thus, subject to conveyance to a Native corporation. These criteria, which were previously reflected but not expressly stated in the definitions section are: (1) Nature and time of use, (2) area to be retained by the Federal agency, and (3) interest to be retained by the Federal agency. Each point will be discussed individually.

(1) Nature and time of use—This criterion derives from § 2655.0–5(a)(1) in the proposed rulemaking and sets out three provisions. The first is that the use must be for a purpose "directly and necessarily connected with a Federal agency as of December 18, 1971". The comments suggested this language would more clearly reflect the intent of section 3(e) than the language in the proposed rulemaking.

The second provision is that the activity must be continuous, depending on the type of use, throughout the appropriate selection period. Two aspects of this provision need to be addressed. The final rulemaking provides that use by the agency during the entire selection period is necessary in order for the lands to be exempt from Native selection. This provision represents a compromise between those comments which favored establishing each agency's use solely on the basis of use on December 18, 1971, and those comments which expressed the view that use at any time during the appropriate selection period and, in some cases, proposed or future use, should make the lands subject to retention by the agency. The provision that use should be continuous, considering the type of use, reflects this compromise.

The third provision is that the agency claiming the land, if different from the agency using the land on December 18, 1971, must have a similar function to that of the original using agency. Again, this portion of the final rulemaking serves to assure that ongoing agency activities are not disrupted, while at the same time precluding Federal agencies performing new and different functions from asserting rights superior to the selecting Native corporations.

(2) Area to be retained by the Federal agency—This criterion derives from §§ 2655.0–5 (a) and (b) in the proposed rulemaking. The first subsection of this section of the final rulemaking states that the area which the Federal agency can retain shall be no bigger than reasonably necessary to support the agency's use. This provision responds to those comments which found inclusion of this provision in the definitions section confusing and repetitive; and further clarifies "smallest practicable tract". The next subsection requires that the tract in question be described in appropriate terms (i.e. by the U.S. survey, smallest aliquot part, metes and bounds or protraction diagram). This provision comes from § 2655.2(a)(2) of the proposed rulemaking and responds to comments which requested an explanation. The third provision lists those types of agency use which fall within the definition of section 3(e), i.e. "land actually used in connection with the administration of Federal installations." This provision is essentially a restatement of §§ 2655.0–5 (a) and (b) in the definitions section of the proposed rulemaking in response to those comments which objected to the inclusion of these items in the definitions section. Improved lands, in subparagraph (A) of § 2655.2(b)(3) are a category of lands that most comments felt qualified as actually being used. Some comments thought subparagraph (B) of that section, concerning buffer zones, should be omitted. However, the regulation reflects the comments which felt that reasonable buffer zones were legitimate actual uses of lands by Federal agencies under the section 3(e) definition. Subparagraph (C) includes unimproved lands used for storage as lands retainable by Federal agencies. It is another clarification of § 2655.0–5(a)(1) of the proposed rulemaking in response to comments.

There were many comments on subparagraph (D) of § 2655.2(b)(3) of the proposed rulemaking concerning gravel. The final rulemaking states that lands containing gravel can be retained by the agency if the use is in direct connection with the agency's purpose. In response to comments which found the proposed rulemaking's "immediate future" standard not justified by the statutory definition nor administratively practical, the Department of the Interior uses the end of the appropriate selection period. This is consistent with the section on "Nature and time of use" as applied to all other Federal lands. Again, this provision reflects a compromise between those comments which indicated the agency's use should be limited to those occurring on December 18, 1971, and those comments which suggested that some uses could extend to an indefinite time in the future.

Subparagraph (E) of § 2655.2(b)(3) is a restatement of §§ 2655.0–5 (a)(3) and (b) of the proposed rulemaking. Agencies will be able to retain lands used by a third party which are directly connected to the holding agency's purposes, but lands used primarily to derive revenue will be available for Native selection.

Although two comments objected to wording in the proposed rulemaking that excludes from lands actually used, those lands which produce revenues for the holding agency if such revenue production can be defined as falling within the mandate of their statutory authority, this language has been retained. The statutory mandates can be interpreted so broadly as to cover almost any kind of revenue production, thereby defeating the intent of the Alaska Native Claims Settlement Act.

(3) *Interest to be retained by Federal agency.* This provision deals with the issue raised in § 2655.2(c)(2) of the proposed rulemaking, namely when easements will be retained and under what authority. In most instances, the holding agency shall retain a full fee interest in the tract; however, the Department has determined that rights-of-way and electronic, light or visibility clear zones may be reserved as easements under section 17(b) of ANCSA and BLM's regulations 43 CFR 2650.4–7. This is consistent with the authority and the intent of section 16(b) of ANCSA and will fully protect the Federal interest. The consultation provisions for section 17(b) easements will govern in the cases where easements are reserved.

Determination Procedures

This section has been amended to remove ambiguities and thus make the procedure easier for the public, Federal agencies and the Bureau of Land Management to understand and follow. Paragraph (a) has been reworked as suggested by comments. It incorporates information contained in the first two sentences of § 2655.2 and paragraphs (d) and (f) of the proposed rulemaking concerning notice, submission of information and time extensions. Two changes were made. At the request of one comment, the information, including maps, should be furnished in triplicate for administrative convenience. As a result of several comments, the final rulemaking provides that the State Director shall provide copies of the information submitted by the holding agency to affected Native corporations.

Another change from the proposed rulemaking is the provision for time extensions of 60 rather than 90 days. Several comments objected to the granting of a 90-day extension saying that it would unduly delay the decision process, while others opposed any extensions. Therefore, the final rulemaking provides for a 60-day extension, which should be adequate for completion of information gathering, yet at the same time reduce the time lag on a determination.

Paragraph (b) of the section in the final rulemaking on determination procedures is essentially the same as paragraph (a) in the proposed rulemaking concerning the information to be furnished by the agency. One change suggested by a comment was that the information be submitted for each discrete tract subject to a determination. Another suggestion was

that the list of rights, interests, or permitted uses granted to others should include the dates of issuance and expiration. This information should prove helpful in making the section 3(e) determination, and consequently the suggestion was adopted.

Paragraph (c) in the final rulemaking incorporates paragraph (g) of the proposed rule pertaining to Native comments, and provides that Native corporations have the same time period for comment as agencies do to submit information. In order to allow for delays in mailing, the time period commences from the date of receipt of the information by the Native corporation.

Paragraph (d) concerning the burden of proof on the agency is a reworking of paragraph (c)(1), the second and third sentences of paragraph (d), and paragraph (e) of the proposed rulemaking. This stipulation resulted from one comment.

Paragraph (e) is a rewrite of paragraph (h) which clarifies points of confusion on the issuance of decision documents that were raised in several of the comments.

The discussion of whether land should be retained in full fee or as an easement as provided in paragraph (c)(2) of the proposed rulemaking has been dealt with in the criteria section.

Adverse Decisions

This section is almost identical to the proposed rulemaking. One addition to paragraph (a) is that the State Director, Alaska, be notified of the Secretary's decision.

Paragraph (b) of § 2655.4 was modified because the comments suggested that baseless appeals might be filed on any determination that was objectionable to a Federal agency or a Native interest. Also, the first sentence was changed to indicate that this provision applies whether the appeal is lodged by an agency or a Native corporation.

Editorial changes and corrections have been made as necessary.

The principal author of this final rulemaking is Beaumont McClure, Alaska Program Staff, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management, and Susan Shands of the Office of the Solicitor, Department of the Interior.

Note.—The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.), a new Subpart 2655 is added to Part 2650, Group 2600, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

October 17, 1980.

Subpart 2655—Federal Installations

Sec.

2655.0–3 Authority.
2655.0–5 Definitions.
2655.1 Lands subject to determination.
2655.2 Criteria for determinations.
2655.3 Determination procedures.
2655.4 Adverse decisions.

Authority: Alaska Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.).

Subpart 2655—Federal Installation

§ 2655.0–3 Authority.

Section 3(e)(1) of the act provides that the Secretary shall determine the smallest practicable tract enclosing land actually used in connection with the administration of Federal installations in Alaska.

§ 2655.0–5 Definitions.

As used in this subpart, the term:

(a) "Holding agency" means any Federal agency claiming use of a tract of land subject to these regulations.

(b) "Appropriate selection period" means the statutory or regulatory period within which the lands were available for Native selection under the act.

(c) "State Director" means the Director, Alaska State Office, Bureau of Land Management.

§ 2655.1 Lands subject to determination.

(a) Holding agency lands located within areas withdrawn by sections 11(a)(1), 16(a), or 16(d) of the act and subsequently selected by a village or regional corporation under sections 12 or 16, or selected by the regional corporation under sections 12 or 16, or selected by the regional corporation for southeast Alaska in accordance with section 14(h)(8)(B) are subject to a determination made under this subpart.

(b) Lands in the National Park System, lands withdrawn or reserved for national defense purposes and those former Indian reserves elected under section 19 of the act are not subject to a determination under section 3(e)(1) of the act or this subpart. Lands withdrawn under section 11(a)(3) or 14(h), except 14(h)(8)(B), of the act do not include lands withdrawn or otherwise appropriated by a Federal agency and, therefore, are not subject to a determination under section 3(e)(1) of the act of this subpart.

§ 2655.2 Criteria for determinations.

Land subject to determination under section 3(e)(1) of the act will be subject to conveyance to Native corporations if they are determined to be public lands under this subpart. If the lands are determined not to be public lands, they will be retained by the holding agency. The Bureau of Land Management shall determine:

(a) Nature and time of use.

(1) If the holding agency used the lands for a purpose directly and necessarily connected with the Federal agency as of December 18, 1971; and

(2) If use was continuous, taking into account the type of use, throughout the appropriate selection period; and

(3) If the function of the holding agency is similiar to that of the Federal agency using the lands as of December 18, 1971.

(b) Specifications for area to be retained by Federal agency.

(1) Area shall be no larger than reasonably necessary to support the agency's use.

(2) Tracts shall be described by U.S. Survey (or portion thereof), smallest aliquot part, metes and bounds or protraction diagram, as appropriate.

(3) Tracts may include:

(i) Improved lands;

(ii) Buffer zone surrounding improved lands as is reasonably necessary for purposes such as safety measures, maintenance, security, erosion control, noise protection and drainage;

(iii) Unimproved lands used for storage;

(iv) Lands containing gravel or other materials used in direct connection with the agency's purpose and not used simply as a source of revenue or services. The extent of the areas reserved as a source of materials will be the area disturbed but not depleted as of the date of the end of the appropriate selection period; and

(v) lands used by a non-governmental entity or private person for a use that has a direct, necessary and substantial connection to the purpose of the holding agency but shall not include lands from which proceeds of the lease, permit, contract, or other means are used primarily to derive revenue.

(c) Interest to be retained by Federal agency.

(1) Generally, full fee title to the tract shall be retained; however, where the tract is used primarily for access, electronic, light or visibility clear zones or right-of-way, an easement may be reserved in lieu of full fee title where the State Director determines that an easement affords sufficient protection, that an easement is customary for the

particular use and that it would further the objectives of the act.

(2) Easements reserved in lieu of full fee title shall be reserved under the provisions of section 17(b) of the act and § 2650.4–7 of this title.

§ 2655.3 Determination procedures.

(a) The State Director shall make the determination pursuant to the provisions in this subpart. Where sufficient information has not already been provided, the State Director shall issue written notice to any Federal agency which the Bureau of Land Management has reason to believe might be a holding agency. The written notice shall provide that the information requested be furnished in triplicate to the State Director within 90 days from the receipt of the notice. Upon receipt of information the State Director will promptly provide affected Native corporations with copies of the documents. Upon adequate and justifiable showing as to the need for an extension by the holding agency, the State Director may grant a time extension up to 60 days to provide the information requested in this subpart.

(b) The information to be provided by the holding agency shall include the following for each tract which is subject to determination:

(1) The function and scope of the installation;

(2) A plottable legal description of the lands used;

(3) A list of structures or other alterations to the character of lands and their function, their location on the tract, and date of construction;

(4) A description of the use and function of any unaltered lands;

(5) A list of any rights, interests or permitted uses the agency has granted to others, including other Federal agencies, along with dates of issuance and expiration and copies of any relevant documents;

(6) If available, site plans, drawings and annotated aerial photographs delineating the boundaries of the installation and locations of the areas used; and

(7) A narrative explanation stating when Federal use of each area began; what use was being made of the lands as of December 18, 1971; whether any action has taken place between December 18, 1971, and the end of the appropriate selection period that would reduce the area needed, and the date this action occurred.

(c) The State Director shall request comments from the selecting Native corporation relating to the identification of lands requiring a determination. The period for comment by the Native corporation shall be as provided for the agency in § 2655.3(a) of this title, but shall commence from the date of receipt of the latest copy of the holding agency's submission.

(d) The holding agency has the burden of proof in proceedings before the State Director under this subpart. A determination of the lands to be retained by the holding agency under section 3(e) of the act and this subpart shall be made based on the information available in the case file. If the holding agency fails to present adequate information on which to base a determination, all lands selected shall be approved for conveyance to the selecting Native corporation.

(e) The results of the determination shall be incorporated into appropriate decision documents.

§ 2655.4 Adverse decisions.

(a) Any decision adverse to the holding agency or Native corporation shall become final unless appealed to the Alaska Native Claims Appeal Board in accordance with 43 CFR Part 4, Subpart J. If a decision is appealed, the Secretary may take personal jurisdiction over the matter in accordance with 43 CFR Part 4.5. In the case of appeals from affected Federal agencies, the Secretary may take jurisdiction upon written request from the appropriate cabinet level official. The requesting official, the State Director and any affected Native corporation shall be notified in writing of the Secretary's decision regarding the request for Secretarial jurisdiction and the reasons for the decision shall be communicated in writing to the requesting agency and any other parties to the appeal.

(b) When an appeal to a decision to issue a conveyance is made by a holding agency or a Native corporation on the basis that the Bureau of Land Management neglected to make a determination pursuant to section 3(e)(1) of the act, the matter shall be remanded by the Alaska Native Claims Appeals Board to the Bureau of Land Management for a determination pursuant to section 3(e)(1) of the act and these regulations: *Provided,* That the holding agency or Native corporation has reasonably satisfied the Board that its claim is not frivolous.

[FR Doc. 80–32856 Filed 10–21–80; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3610

[Circular No. 2479]

Mineral Materials Sales, Noncompetitive (Negotiated) Sales; Dollar Limitations

Under the authority of the Act of July 31, 1947, as amended, (43 U.S.C. 602) Subpart 3611, Part 3610, Group 3600, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Subpart 3611 is amended by adding a new section 3611.4 to read as follows:

Subpart 3611—Noncompetitive (Negotiated) Sales

* * * * *

§ 3611.4 Exceptions.

The dollar limitations in § 3611.1 and § 3611.3 shall not apply to sales in the State of Alaska of mineral materials which the authorized officer determines are needed for construction, operation, maintenance or termination of the Trans-Alaska Pipeline System or the Alaska Natural Gas Transportation System.

Guy R. Martin,
Assistant Secretary of the Interior.
November 17, 1980.

[FR Doc. 80-36561 Filed 11-21-80; 8:45 am]

Published in 45 F.R. 77438, November 24, 1980 - Effective November 24, 1980.

Circular Distribution List

GPO 859-246

Circular # 2479

43 CFR Part 3610

[Circular No. 2479]

Mineral Materials Sales, Noncompetitive (Negotiated) Sales; Dollar Limitations

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency final rulemaking.

SUMMARY: This emergency final rulemaking will remove the dollar limitations on negotiated sales of mineral materials that will be used on the Trans-Alaska Pipeline System and Alaska Natural Gas Transportation System in Alaska. There is an urgent need for additional fossil fuel supplies to the United States. The intended effect of this rulemaking is to expedite the construction and operation of two fossil fuel transportation systems in Alaska to meet this need.

EFFECTIVE DATE: November 24, 1980.

ADDRESS: Any suggestions or inquiries should be sent to: Director (140), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Larry Montross (202) 343–6226.

SUPPLEMENTARY INFORMATION: The principal author of this regulation is Larry Montross of the Office of Special Projects, Bureau of Land Management, Washington, D.C., assisted by the staff of the Office of Legislation and Regulatory Management.

This emergency final rulemaking will remove the dollar limitations on negotiated sales of mineral materials that will be used on the Alaska Natural Gas Transportation System (ANGTS) in Alaska and the Trans-Alaska Pipeline System (TAPS).

Present regulations require competition, but competitive sales take longer to process than negotiated sales and experience with TAPS has shown that, for all practical purposes, competition does not exist.

The Alaska Natural Gas Transportation Act of 1976 declares that the expeditious construction of a natural gas pipeline is in the national interest and the Act of July 31, 1947 provides that the Secretary may authorize negotiated sales of materials if it is impracticable to obtain competition. It is desirable that mineral materials for the two transportation systems be acquired by negotiated sales. In addition, the elimination of the dollar requirements for these negotiated sales is considered appropriate for the following reasons:

(1) The efficiency of pipeline construction can be increased because the elimination of dollar limits would allow purchase of larger quantities through fewer sales.

(2) The quantities of gravel required will involve dollar amounts that are far in excess of the one-year, $10,000 limitation currently required in the regulations.

Even though TAPS became operational in 1977 it is included in this regulation because there is a continuing annual need of approximately two million cubic yards of gravel for routine maintenance and the construction of new facilities such as pump plants.

The right-of-way grant for ANGTS is presently under review by Congress and anticipated to be completed by November. Shortly thereafter, the grant is expected to be issued. Thus, the need for gravel appears imminent and is the reason for the emergency nature of these regulations.

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Act of July 31, 1947, as amended, (43 U.S.C. 602) Subpart 3611, Part 3610, Group 3600, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

November 17, 1980.

1. Subpart 3611 is amended by adding a new section 3611.4 to read as follows:

Subpart 3611—Noncompetitive (Negotiated) Sales

* * * * *

§ 3611.4 Exceptions.

The dollar limitations in § 3611.1 and § 3611.3 shall not apply to sales in the State of Alaska of mineral materials which the authorized officer determines are needed for construction, operation, maintenance or termination of the Trans-Alaska Pipeline System or the Alaska Natural Gas Transportation System.

[FR Doc. 80–36561 Filed 11–21–80; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[Circular No. 2480]

Surface Management of Public Lands Under U.S. Mining Laws

Under the authority of sections 2319 (30 U.S.C. 22) and 2478 (43 U.S.C. 1201) of the Revised Statutes and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 3800, Group 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is revised by adding a new Subpart 3809 as set forth below.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

General

Subpart 3809—Surface Management

Sec.

3809.0-1 Purpose.
3809.0-2 Objectives.
3809.0-3 Authority.
3809.0-5 Definitions.
3809.0-6 Policy.
3809.1 Operations.
3809.1-1 Reclamation.
3809.1-2 Casual use—negligible disturbance.
3809.1-3 Notice—disturbance of 5 acres or less.
3809.1-4 Plan of operations—when required.
3809.1-5 Filing and contents of plan of operations.
3809.1-6 Plan approval.
3809.1-7 Modification of plan.
3809.1-8 Existing operations.
3809.1-9 Bonding requirements.
3809.2 Prevention of unnecessary or undue degradation.
3809.2-1 Environmental assessment.
3809.2-2 Other requirements for environmental protection.
3809.3 General provisions.
3809.3-1 Applicability of State law.
3809.3-2 Noncompliance.
3809.3-3 Access.
3809.3-4 Fire prevention and control.
3809.3-5 Maintenance and public safety.
3809.3-6 Inspection.
3809.3-7 Period of Non-operation.
3809.4 Appeals.
3809.5 Public availability of information.
3809.6 Special provisions relating to mining claims patented within the boundaries of the California Desert Conservation Area.

General

Subpart 3809—Surface Management

§ 3809.0-1 Purpose.

The purpose of this subpart is to establish procedures to prevent unnecessary or undue degradation of federal lands which may result from operations authorized by the mining laws.

§ 3809.0-2 Objectives.

The objectives of this regulation are to:

(a) Provide for mineral entry, exploration, location, operations, and purchase pursuant to the mining laws in a manner that will not unduly hinder such activities but will assure that these activities are conducted in a manner that will prevent unnecessary or undue degradation and provide protection of nonmineral resources of the federal lands;

(b) Provide for reclamation of disturbed areas; and

(c) Coordinate, to the greatest extent possible, with appropriate State agencies, procedures for prevention of unnecessary or undue degradation with respect to mineral operations.

§ 3809.0-3 Authority.

(a) Section 2319 of the Revised Statutes (30 U.S.C. 22 *et seq.*) provides that exploration, location and purchase of valuable mineral deposits, under the mining laws, on federal lands shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations shall be issued by the Secretary.

(b) Sections 302, 303, 601, and 603 of the Federal and Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) require the Secretary to take any action, by regulation or otherwise, to prevent unnecessary or undue degradation of the federal lands, provide for enforcement of those regulations, and direct the Secretary to manage the California Desert Conservation Area under reasonable regulations which will protect the scenic, scientific, and environmental values against undue impairment, and to assure against pollution of streams and waters.

(c) The Act of July 23, 1955 (30 U.S.C. 612), provides that rights under mining claims located after July 23, 1955, shall prior to issuance of patent therefor, be subject to the right of the United States to manage and dispose of the vegetative surface resources and to manage other surface resources. The Act also provides that "Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance to patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto."

(d) Section 9 of the Wild and Scenic Rivers Act (16 U.S.C. 1280) provides that regulations issued shall, among other things, provide safeguards against pollution of the rivers involved and unnecessary impairment of the scenery within the area designated for potential addition to, or an actual component of the national wild and scenic rivers system.

§ 3809.0-5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

(b) "Casual Use" means activities ordinarily resulting in only negligible disturbance of the federal lands and resources. For example, activities are generally considered "casual use" if they do not involve the use of mechanized earth moving equipment or explosives or do not involve the use of motorized vehicles in areas designated as closed or limited to off-road vehicles as defined in subpart 8340 of this title.

(c) "Federal lands" means lands subject to the mining laws including, but not limited to, the certain "public lands" defined in section 103 of the Federal Land Policy and Management Act of 1976. Federal lands does not include lands in the National Park System, National Forest System, and the National Wildlife Refuge System, nor does it include acquired lands, Stockraising Homestead lands or lands where only the mineral interest is reserved to the United States or lands under Wilderness Review and administered by the Bureau of Land Management (these lands are subject to the 43 CFR Part 3802 regulations).

(d) "Mining claim" means any unpatented mining claim, millsite, or tunnel site located under the mining laws and those patented mining claims and millsites located in the California

Published in 45 F.R. 78902, November 26, 1980 - Effective January 1, 1981.

Circular Distribution List

Desert Conservation Area which have been patented subsequent to the enactment of the Federal Land Policy and Management Act of October 21, 1976.

(e) "Mining laws" means the Lode Law of July 26, 1866, as amended (14 Stat. 251); the Placer Law of July 9, 1870, as amended (16 Stat. 217); and the Mining Law of May 10, 1872, as amended (17 Stat. 91); and all laws supplementing and amending those laws, including among others the Building Stone Act of August 4, 1892, as amended (27 Stat. 348); and the Saline Placer Act of January 31, 1901 (31 Stat. 745).

(f) "Operations" means all functions, work, facilities, and activities in connection with prospecting, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws and all other uses reasonably incident thereto, whether on a mining claim or not, including but not limited to the construction of roads, transmission lines, pipelines, and other means of access for support facilities across federal lands subject to these regulations.

(g) "Operator" means a person conducting or proposing to conduct operations.

(h) "Person" means any citizen of the United States or person who has declared the intention to become such and includes any individual, partnership, corporation, association, or other legal entity.

(i) "Project area" means a single tract of land upon which an operator is, or will be, conducting operations. It may include one mining claim or a group of mining claims under one ownership on which operations are or will be conducted, as well as federal lands on which an operator is exploring or prospecting prior to locating a mining claim.

(j) "Reclamation" means taking such reasonable measures as will prevent unnecessary or undue degradation of the federal lands, including reshaping land disturbed by operations to an appropriate contour and, where necessary, revegetating disturbed areas so as to provide a diverse vegetative cover. Reclamation may not be required where the retention of a stable highwall or other mine workings is needed to preserve evidence of mineralization.

(k) "Unnecessary or undue degradation" means surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas or creation of a nuisance may constitute unnecessary or undue degradation. Failure to comply with applicable environmental protection statutes and regulations thereunder will constitute unnecessary or undue degradation. Where specific statutory authority requires the attainment of a stated level of protection or reclamation, such as in the California Desert Conservation Area, Wild and Scenic Rivers, and other such areas, that level of protection shall be met.

§ 3809.0–6 Policy.

Consistent with section 2 of the Mining and Mineral Policy Act of 1970 and section 102(a) (7), (8), and (12) of the Federal Land Policy and Management Act, it is the policy of the Department of the Interior to encourage the development of federal mineral resources and reclamation of disturbed lands. Under the mining laws a person has a statutory right, consistent with Departmental regulations, to go upon the open (unappropriated and unreserved) federal lands for the purpose of mineral prospecting, exploration, development, extraction and other uses reasonably incident thereto. This statutory right carries with it the responsibility to assure that operations include adequate and responsible measures to prevent unnecessary or undue degradation of the federal lands and to provide for reasonable reclamation.

§ 3809.1 Operations.

§ 3809.1–1 Reclamation.

All operations, whether casual, under a notice, or by a plan of operations, shall be reclaimed as required in this title.

§ 3809.1–2 Casual use—negligible disturbance.

No notification to or approval by the authorized officer is required for casual use operations. However, casual use operations are subject to monitoring by the authorized officer to ensure that unnecessary or undue degradation of federal lands will not occur.

§ 3809.1–3 Notice—disturbance of 5 acres or less.

(a) All operators on project areas whose operations, including access across federal lands to the project area, cause a cumulative surface disturbance of 5 acres or less during any calendar year shall notify the authorized officer in the District office of the Bureau of Land Management having jurisdiction over the land in which the claim(s) or project area is located. Prior to conducting additional operations under a subsequent notice, the operator shall have completed reclamation of operations which were conducted under any previous notice. Notification of such activities, by the operator, shall be made at least 15 calendar days before commencing operations under this subpart by a written notice or letter.

(b) Approval of a notice, by the authorized officer, is not required. Consultation with the authorized officer may be required under § 3809.1–3(c)(3) of this title when the construction of access routes are involved.

(c) The notice or letter shall include:

(1) Name and mailing address of the mining claimant and operator, if other than the claimant. Any change of operator or in the mailing address of the mining claimant or operator shall be reported promptly to the authorized officer;

(2) When applicable, the name of the mining claim(s), and serial number(s) assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title on which disturbance will likely take place as a result of the operations;

(3) A statement describing the activities proposed and their location in sufficient detail to locate the activities on the ground, and giving the approximate date when operations will start. The statement shall include a description and location of access routes to be constructed and the type of equipment to be used in their construction. Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable, to minimize cut and fill. When the construction of access routes involves slopes which require cuts on the inside edge in excess of 3 feet, the operator may be required to consult with the authorized officer concerning the most appropriate location of the access route prior to commencing operations;

(4) A statement that reclamation of all areas disturbed will be completed to the standard described in § 3809.1–3(d) of this title and that reasonable measures will be taken to prevent unnecessary or undue degradation of the federal lands during operations.

(d) The following standards govern activities conducted under a notice:

(1) Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill.

(2) All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and State Laws.

(3) At the earliest feasible time, the operator shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization, by taking reasonable measures to prevent or control on-site and off-site damage of the federal lands.

(4) Reclamation shall include, but shall not be limited to:

(i) Saving of topsoil for final application after reshaping of disturbed

areas have been completed;

(ii) Measures to control erosion, landslides, and water runoff;

(iii) Measures to isolate, remove, or control toxic materials;

(iv) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(v) Rehabilitation of fisheries and wildlife habitat.

(5) When reclamation of the disturbed area has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

(e) Operations conducted pursuant to this subpart are subject to monitoring by the authorized officer to ensure that operators are conducting operations in a manner which will not cause unnecessary or undue degradation.

(f) Failure of the operator to complete reclamation to the standards described in this subpart may cause the operator to be subject to a notice of noncompliance as described in § 3809.3–2 of this title.

§ 3809.1–4 Plan of operations—when required.

An approved plan of operations is required prior to commencing:

(a) Operations which exceed the disturbance level (5 acres) described in § 3809.1–3 of this title.

(b) Any operation, except casual use, in the following designated areas:

(1) California Desert Conservation Area;

(2) Areas designated for potential addition to, or an actual component of the national wild and scenic rivers system,

(3) Designated Areas of Critical Environmental Concern;

(4) Areas designated as part of the National Wilderness Preservation System and administered by the Bureau of Land Management;

(5) Areas withdrawn from operation of the mining laws in which valid existing rights are being exercised; and

(6) Areas designated as "closed" or "limited" to off-road vehicle use as defined in subpart 8340 of this title.

§ 3809.1–5 Filing and contents of plan of operations.

(a) A plan of operations must be filed in the District Office of the Bureau of Land Management having jurisdiction over the federal lands in which the claim(s) or project area is located.

(b) No special form is required for filing a plan.

(c) The plan shall include:

(1) The name and mailing address of the operator (and claimant if not the operator). Any change of operator or change in the mailing address shall be promptly reported to the authorized officer;

(2) A map, preferably a topographic map, or sketch showing existing and/or proposed routes of access, aircraft landing areas, or other means of access, and size of each area where surface disturbance will occur;

(3) When applicable, the name of the mining claim(s) and mining claim serial numbers assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title.

(4) Information sufficient to describe or identify the type of operations proposed, how they will be conducted and the period during which the proposed activity will take place;

(5) Measures to be taken to prevent unnecessary or undue degradation and measures to reclaim disturbed areas resulting from the proposed operations, including the standards listed in § 3809.1–3(d) of this title. Where an operator advises the authorized officer that he/she does not have the necessary technical resources to develop such measures the authorized officer will assist the operator in developing such measures. If an operator submits reclamation measures, the authorized officer will ensure that the operator's plan is sufficient to prevent unnecessary or undue degradation. All reclamation measures developed by the operator, or by the authorized officer in conjunction with the operator, shall become a part of the plan of operations.

(6) Measures to be taken during extended periods of nonoperation to maintain the area in a safe and clean manner and to reclaim the land to avoid erosion and other adverse impacts. If not filed at the time of plan submittal, this information shall be filed with the authorized officer whenever the operator anticipates a period of nonoperation.

§ 3809.1–6 Plan approval.

(a) A proposed plan of operations shall be submitted to the authorized officer, who shall promptly acknowledge receipt thereof to the operator. The authorized officer shall, within 30 days of such receipt, analyze the proposal in the context of the requirement to prevent unnecessary or undue degradation and provide for reasonable reclamation, and shall notify the operator:

(1) That the plan is approved; or

(2) Of any changes in or additions to the plan necessary to meet the requirements of these regulations; or

(3) That the plan is being reviewed, but that a specified amount of time, not to exceed an additional 60 days, is necessary to complete the review, setting forth the circumstances which justify additional time for review. However, days during which the area of operations is inaccessible for inspection shall not be counted when computing the 60 day period; or

(4) That the plan cannot be approved until 30 days after a final environmental statement has been prepared and filed with the Environmental Protection Agency; or

(5) That the plan cannot be approved until the authorized officer has complied with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act.

(b) The authorized officer shall consult with the appropriate official of the bureau or agency having surface management responsibilities where such responsibility is not exercised by the Bureau of Land Management. Prior to plan approval the authorized officer shall obtain the concurrence of such appropriate official to the terms and conditions that may be needed to prevent unnecessary or undue degradation.

(c) The authorized officer shall undertake an appropriate level of cultural resource inventory of the area to be disturbed. The inventory shall be completed within the time allowed by these regulations for approval of the plan (30 days). The operator is not required to do the inventory but may hire an archaeologist approved by the Bureau of Land Management in order to complete the inventory more expeditiously. The responsibility for and cost of salvage of cultural resources discovered during the inventory shall be the Federal Government's. The responsibility of avoiding adverse impacts on those cultural resources discovered during the inventory shall be the operator's.

(d) Pending final approval of the plan, the authorized officer shall approve any operations that may be necessary for timely compliance with requirements of Federal and State laws, subject to any terms and conditions that may be needed to prevent unnecessary or undue degradation.

(e) In the event of a change of operators involving an approved plan of operations, the new operator shall satisfy the requirements of § 3809.1–9 of this title as it relates to bonding.

§ 3809.1–7 Modification of plan.

(a) At any time during operations under an approved plan, the operator on his/her own initiative may modify the plan or the authorized officer may request the operator to do so.

(b) A significant modification of an approved plan must be reviewed and

approved by the authorized officer in the same manner as the initial plan.

(c)(1) If, when requested to do so by the authorized officer, the operator does not furnish a proposed modification within a reasonable time, usually 30 days, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the facts and the reasons for the recommendations.

(2) In acting upon such recommendations the State Director shall determine, within 30 days, whether:

(i) All reasonable measures were taken by the authorized officer at the time the plan was approved to ensure that the proposed operations would not cause unnecessary or undue degradation of the federal land;

(ii) The disturbance from the operations of the plan as approved or from unforeseen circumstances is or may become of such significance that modification of the plan is essential in order to prevent unnecessary or undue degradation; and

(iii) The disturbance can be minimized using reasonable means.

(3) Once the matter has been sent to the State Director, an operator is not required to submit a proposed modification of an approved plan until a determination is made by the State Director. Where the State Director determines that a plan shall be modified, the operator shall timely submit a modified plan to the authorized officer for review and approval.

(4) Operations may continue in accordance with the approved plan until a modified plan is approved, unless the State Director determines that the operations are causing unnecessary or undue degradation to the land. The State Director shall advise the operator of those reasonable measures needed to avoid such degradation and the operator shall immediately take all necessary steps to implement those measures within a reasonable period established by the State Director.

§ 3809.1-8 Existing operations.

(a) Persons conducting operations on the effective date of these regulations, who would be required to submit a notice under § 3809.1-3 or a plan of operations under § 3809.1-4 of this title may continue operations but shall, within:

(1) 30 days submit a notice with required information outlined in § 3809.1-3 of this title for operations where 5 acres or less will be disturbed during a calendar year; or

(2) 120 days submit a plan in those areas identified in § 3809.1-4 of this title. Upon a showing of good cause, the authorized officer may grant an extension of time, not to exceed an additional 180 days, to submit a plan.

(b) Operations may continue according to the submitted plan during its review. If the authorized officer determines that operations are causing unnecessary or undue degradation of the federal lands involved, the authorized officer shall advise the operator of those reasonable measures needed to avoid such degradation, and the operator shall take all necessary steps to implement those measures within a reasonable time recommended by the authorized officer. During the period of an appeal, if any, operations may continue without change, subject to other applicable Federal and State laws.

(c) Upon approval of a plan by the authorized officer, operations shall be conducted in accordance with the approval plan.

§ 3809.1-9 Bonding requirements.

(a) No bond shall be required for operations that constitute casual use (§ 3809.1-2) or that are conducted under a notice (§ 3809.1-3 of this title).

(b) Any operator who conducts operations under an approved plan of operations as described in § 3809.1-5 of this title may, at the discretion of the authorized officer, be required to furnish a bond in an amount specified by the authorized officer. The authorized officer may determine not to require a bond in circumstances where operations would cause only minimal disturbance to the land. In determining the amount of the bond, the authorized officer shall consider the estimated cost of reasonable stabilization and reclamation of areas disturbed. In lieu of the submission of a separate bond, the authorized officer may accept evidence of an existing bond pursuant to State law or regulations for the same area covered by the plan of operations, upon a determination that the coverage would be equivalent to that provided in this section.

(c) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a market value at the time of deposit of not less than the required dollar amount of the bond.

(d) In place of the individual bond on each separate operation, a blanket bond covering statewide or nationwide operations may be furnished at the option of the operator, if the terms and conditions, as determined by the authorized officer, are sufficient to comply with these regulations.

(e) In the event that an approved plan is modified in accordance with § 3809.1-7 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, adjust the amount of the bond to conform to the plan as modified.

(f) When all or any portion of the reclamation has been completed in accordance with the approved plan, the operator may notify the authorized officer that such reclamation has occurred and that she/he seeks a reduction in bond or Bureau approval of the adequacy of the reclamation, or both. Upon any such notification, the authorized officer shall promptly inspect the reclaimed area with the operator. The authorized officer shall then notify the operator, in writing, whether the reclamation is acceptable. When the authorized officer has accepted as completed any portion of the reclamation, the authorized officer shall authorize that the bond be reduced proportionally to cover the remaining reclamation to be accomplished.

(g) When a mining claim is patented, the authorized officer shall release the operator from that portion of the performance bond which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator has completed acceptable reclamation. However, existing access to patented mining claims, if across Federal lands shall continue to be regulated under the approved plan. The provisions of this subsection do not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area (See § 3809.6 of this title).

§ 3809.2 Prevention of unnecessary or undue degradation.

§ 3809.2-1 Environmental assessment.

(a) When an operator files a plan of operations or a significant modification which encompasses land not previously covered by an approved plan, the authorized officer shall make an environmental assessment or a supplement thereto to identify the impacts of the proposed operations on the lands and to determine whether an

environmental impact statement is required.

(b) In conjunction with the operator, the authorized officer shall use the environmental assessment to determine the adequacy of mitigating measures and reclamation procedures included in the plan to insure the prevention of unnecessary or undue degradation of the land. If an operator advises the authorized officer that he/she is unable to prepare mitigating measures, the authorized officer, in conjunction with the operator, shall use the environmental assessment as a basis for assisting the operator in developing such measures.

(c) If, as a result of the environmental assessment, the authorized officer determines that there is "substantial public interest" in the plan, the authorized officer shall notify the operator, in writing, that an additional period of time, not to exceed the additional 60 days provided for approval of a plan is § 3809.1-6(a) of this title, is required to consider public comments on the environmental assessment.

§ 3809.2-2 Other requirements for environmental protection.

All operations, including casual use and operations under either a notice (§ 3809.1-3) or a plan of operations (§ 3809.1-4 of this title), shall be conducted to prevent unnecessary or undue degradation of the federal lands and shall comply with all pertinent Federal and State laws, including but not limited to the following:

(a) *Air Quality.* All operators shall comply with applicable Federal and State air quality standards, including the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(b) *Water Quality.* All operators shall comply with applicable Federal and State water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*).

(c) *Solid Wastes.* All operators shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). All garbage, refuse or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.

(d) *Fisheries, Wildlife and Plant Habitat.* The operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.

(e) *Cultural and Paleontological Resources.* (1) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on federal lands.

(2) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on federal lands by his/her operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days.

(3) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontology values discovered after a plan of operations has been approved, or where a plan is not involved.

(f) *Protection of survey monuments.* To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.

§ 3809.3 General provisions.

§ 3809.3-1 Applicability of State law.

(a) Nothing in this subpart shall be construed to effect a preemption of State laws and regulations relating to the conduct of operations or reclamation on federal lands under the mining laws.

(b) After the publication date of these regulations the Director, Bureau of Land Management, shall conduct a review of State laws and regulations in effect or due to come into effect, relating to unnecessary or undue degradation of lands disturbed by exploration for, or mining of, minerals locatable under the mining laws.

(c) The Director may consult with appropriate representatives of each State to formulate and enter into agreements to provide for a joint Federal-State program for administration and enforcement. The purpose of such agreements is to prevent unnecessary or undue degradation of the federal lands from operations which are conducted under the mining laws, to prevent unnecessary administrative delay and to avoid duplication of administration and enforcement of laws. Such agreements may, whenever possible, provide for State administration and enforcement of such programs.

§ 3809.3-2 Noncompliance.

(a) Failure of an operator to file a notice under § 3809.1-3 of this title or a plan of operations under § 3809.1-4 of this title will subject the operator, at the discretion of the authorized officer, to being served a notice of non-compliance or enjoined from the continuation of such operations by a court order until such time as a notice or plan is filed with the authorized officer. The operator shall also be responsible to reclaim operations conducted without an approved plan of operations or prior to the filing of a required notice.

(b) Failure to reclaim areas disturbed by operations under § 3809.1-3 of this title is a violation of these regulations.

(1) Where an operator is conducting operations covered by 3809.1-3 (notice) of this title and fails to comply with the provisions of that section or properly conduct reclamation according to standards set forth in 3809.1-3(d) of this title, a notice of noncompliance shall be served by delivery in person to the operator or his/her authorized agent, or by certified mail addressed to his/her address of record.

(2) Operators conducting operations under an approved plan of operations who fails to follow the approved plan of operations may be subject to a notice of noncompliance. A notice of noncompliance shall be served in the same manner as described in § 3809.3-2(b)(1) above.

(c) All operators who conduct operations under a notice pursuant to § 3809.1-3 and a plan pursuant to § 3809.1-4 of this title on federal lands without taking the actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(d) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of applicable regulations, and shall specify the actions which are in violation of the regulations and the actions which shall be taken to correct the noncompliance and the time, not to exceed 30 days, within which corrective action shall be started.

(e) Failure of an operator to take necessary actions on a notice of

noncompliance, may constitute justification for requiring the submission of a plan of operations under § 3809.1–5 of this title, and mandatory bonding for subsequent operations which would otherwise be conducted pursuant to a notice under § 3809.1–3 of this title.

§ 3809.3–3. Access.

(a) An operator is entitled to access to his operations consistent with provisions of the mining laws.

(b) Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

§ 3809.3–4 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

§ 3809.3–5 Maintenance and public safety.

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and State laws and regulations.

§ 3809.3–6 Inspection.

The authorized officer may periodically inspect operations to determine if the operator is complying with these regulations. The operator shall permit the authorized officer access for this purpose.

§ 3809.3–7 Periods of non-operation.

All operators shall maintain the site, structures and other facilities of the operations in a safe and clean condition during any non-operating periods. All operators may be required, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment and other facilities and reclaim the site of operations, unless he/she receives permission, in writing, from the authorized officer to do otherwise.

§ 3809.4 Appeals.

(a) Any operator adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal to the State Director, and thereafter to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to Part 4 of this title, if the State Director's decision is adverse to the appellant.

(b) No appeal shall be considered unless it is filed, in writing, in the office of the authorized officer who made the decision from which an appeal is being taken, within 30 days after the date of the decision. A decision of the authorized officer from which an appeal is taken to the State Director shall be effective during the pendency of an appeal. A request for a stay may accompany the appeal.

(c) The appeal to the State Director shall contain:

(1) The name and mailing address of the appellant.

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded pursuant to subpart 3833 of this title which are subject to the appeal.

(3) A statement of the reasons for the appeal and any arguments the appellant wishes to present which would justify reversal or modification of the decision.

(d) The State Director shall promptly render a decision on the appeal. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the appellant by certified mail, return receipt requested.

(e) The decision of the State Director, when adverse to the appellant, may be appealed to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to Part 4 of this title.

(f) Any party, other than the operator, aggrieved by a decision of the authorized officer shall utilize the appeals procedures in Part 4 of this title. The filing of such an appeal shall not stop the authorized officer's decision from being effective.

(g) Neither the decision of the authorized officer nor the State Director shall be construed as final agency action for the purpose of judicial review of that decision.

§ 3809.5 Public availability of information.

(a) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information shall not be available for public examination. Other information and data submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act.

(b) The determination concerning specific information which may be withheld from public examination shall be made in accordance with the rules in 43 CFR Part 2.

§ 3809.6 Special provisions relating to mining claims patented within the boundaries of the California Desert Conservation Area.

In accordance with section 601(f) of the Federal Land Policy and Management Act of October 21, 1976, all patents issued on mining claims located within the boundaries of the California Desert Conservation Area after the enactment of the Federal Land Policy and Management Act shall be subject to the regulations in this subpart, including the continuation of a plan of operations and of bonding with respect to the land covered by the patent.

Guy R. Martin,
Assistant Secretary of the Interior.
November 19, 1980.

[FR Doc. 80-36497 Filed 11-25-80; 8:45 am]

☆ U.S. GOVERNMENT PRINTING OFFICE: 1981—778-874/243 Region No. 8

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3300

[Circular No. 2481]

Amendment to the Regulations on Grants of Pipeline Rights-of-Way on the Outer Continental Shelf

Under the authority of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.), Subpart 3340, Part 3300, Group 3300, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

§ 3340.0–2 [Amended]

1. Section 3340.0–2 is amended by the deletion of the second paragraph.

2. Subpart 3340 is amended by the addition of a new section 3340.0–4 as follows:

§ 3340.0–4 Responsibilities.

(a) The Bureau of Land Management is responsible for making right-of-way grants for pipelines on the Outer Continental Shelf that are not wholly contained within the boundaries of a single lease, the boundaries of unitized leases or the boundaries of contiguous, not cornering, leases of the same leasee or lessee's operator.

(b) The U.S. Geological Survey is responsible for issuing permits in accordance with the provisions of 30 CFR 250.20 for pipelines on the Outer Continental Shelf which are wholly contained within the boundaries of a single lease, the boundaries of unitized leases or the boundaries of contiguous, not cornering, leases of the same leasee or lessee's operator.

3. Section 3340.2–1(e)(1) is amended to read as follows:

§ 3340.2–1 Applications.

* * * * *

(e)(1) An applicant shall show the extent to which the right-of-way applied for invades or crosses mineral leases and rights-of-way granted by the Bureau of Land Management or pipelines permitted by the U.S. Geological Survey, other than mineral leases, rights-of-way or pipelines of the applicant. The application shall contain a statement that a copy of the application has been delivered personally or by registered or certified mail to each lessee, right-of-way or pipeline permit holder whose lease, right-of-way or pipeline permit is so affected. * * *

Guy R. Martin,

Assistant Secretary of the Interior.

November 18, 1980.

[FR Doc. 80–36496 Filed 11–21–80; 8:45 am]

Published in 45 F.R. 77437, November 24, 1980 - Effective November 24, 1980.

Circular Distribution List

GPO 859-247

Circular 2482

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Rules

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Part XI

Department of the Interior

Bureau of Land Management

Exchange Procedures for Public Lands

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2091, 2200, 2210, 2220, 2230, 2240, 2250, 2260 and 2270

[Circular No. 2482]

Exchange Procedures for the Public Lands

AGENCY: Bureau of Land Management, Interior

ACTION: Final rulemaking.

SUMMARY: The Federal Land Policy and Management Act of 1976 repealed a major part of the law that gave the Secretary of the Interior exchange authority and replaced it with more comprehensive authority. This final rulemaking sets forth the procedures that will be used by the Secretary in carrying out the exchange authority granted by section 206 of the Federal Land Policy and Management Act.

EFFECTIVE DATE: February 5, 1981.

ADDRESS: Any suggestions or recommendations should be sent to: Director (321), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: David C. Hemstreet, (202) 343–8731, or Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published in the Federal Register on June 20, 1980. Comments were invited for 60 days ending on August 19, 1980. Comments were received from 32 different sources, 17 from various Federal agencies, 13 from business interests, 1 from a State government and 1 from a local government. The discussion of the comments will be in two parts, general comments and specific comments. The latter will discuss each of the sections of the proposed rulemaking that received comments.

General Comments

Nearly all of the comments were favorable to the proposed rulemaking. Several of the comments commended the Bureau of Land Management for its efforts to develop a rulemaking that carried out the intent of section 206 of the Federal Land Policy and Management Act in an orderly and efficient manner.

One comment made the observation that the term "lands and interests in lands" is used in several places in the rulemaking and the term "lands or interests in lands" is used in other places. The comment expressed the view that only one or other of the terms should be used for consistency. Since the term "lands and interests in lands" is used in the Federal Land Policy and Management Act, the final rulemaking uses that term except where it is inappropriate.

Another comment suggested that the rulemaking should provide a procedure for review by the next higher decisionmaking level of decisions by the authorized officer on an exchange. The reason given for the suggestion was a concern that exchanges involving two or more Bureau of Land Management districts or benefitting an agency other than the Bureau of Land Management would never be given serious consideration. Employees of the Bureau of Land Management have the ability to make a determination that an exchange is in the public interest and to handle it accordingly. Further, if there is a difference of opinion between two districts regarding an exchange, the decision will be made by the State Director. No change has been made in the final rulemaking as it applies to this comment.

A comment correctly stated that the provisions of part 2200 will apply to parts 2210, 2240, 2250 and 2270. The comment suggested that language be included in the final rulemaking stating that part 2200 applies to all exchanges covered by the regulations in group 2200 of Title 43 of the Code of Federal Regulations unless it is specifically provided otherwise. This suggested language is not needed because language stating that exchanges made under parts 2210, 2240, 2250 and 2270 are to be handled in a manner consistent with the provisions of part 2200 already appears in parts 2210, 2240, 2250 and 2270.

A comment raised questions about the applicability of this rulemaking to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road lands. Section 705(a) of the Federal Land Policy and Management Act repealed the special exchange provisions of the Act of July 31, 1939 (53 Stat. 1144) and provided the more comprehensive authority of section 206 as a replacement for that authority. As a result of the changes made by the Federal Land Policy and Management Act, part 2260 is deleted from the Code of Federal Regulations by this rulemaking. The repeal of the Act of July 31, 1939, removed the authority of the Secretary of the Interior to treat lands exchanged under that authority as lands having the special character of revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road lands. This rulemaking cannot grant the Secretary authority that is not granted by law. If a change needs to be made to protect the special nature of the involved lands, it will have to be done by legislation.

One comment suggested that the final rulemaking include a provision for cost reimbursement when an exchange is processed for an agency other than the Bureau of Land Management. This comment was not adopted at this time, but will be considered for possible future amendment.

One comment raised questions about the applicability of this rulemaking to exchanges authorized by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) and requested that language be included in this rulemaking regarding actions to be taken in the procedure leading to a determination of whether to make an exchange or not. A change has been made in the scope section to identify more precisely the section of the Coal Management regulations that is the basis for a determination of whether an exchange qualifies. Otherwise, no change has been made in this final rulemaking as it relates to exchanges under the Coal Management regulations in part 3400. Once the determination is made that an exchange qualifies and should be made, the exchange will be made pursuant to the procedures established by this rulemaking. Changes in the process of determining the eligibility of an exchange under the Surface Mining Control and Reclamation Act will be made when the Coal Management regulations are amended.

One final general comment questioned the use of the "Uniform Appraisal Standards for Federal Land Acquisition" as the basis of appraisals for exchanges made under this rulemaking, especially appraisals of mineral interests. The comment was of the view that the standards set in that publication were too limited and wanted the rulemaking to be changed to include other standards for appraisal. The rulemaking has not been changed to include other standards because the standard is considered to be adequate.

Specific Comments

Objective—The one comment on this section requested further elaboration on the process used to determine that the values and uses of the lands under Federal ownership are not greater than those of the lands under non-Federal ownership which will be received as a result of the exchange. This suggested change has not been adopted because the entire thrust of the rulemaking is to establish a procedure for determining whether an exchange meets the

requirements set out in the Federal Land Policy and Management Act and should be made.

Authority—One comment suggested that a reference to section 204 of the Federal Land Policy and Management Act should be included in this section. This suggestion was based on the fact the rulemaking provides for a 2-year segregation period from the date of issuance of the notice of realty action. No reference to section 204 has been made in the final rulemaking because it is not the basis for the segregation provided in the rulemaking. The basis for the segregation in this rulemaking is the general regulatory authority given by law to the Secretary of the Interior to allow for the orderly administration of the public land laws.

A comment suggested that the authority section be clarified with reference to its applicability to exchange proposals filed prior to October 21, 1976. The rulemaking clearly states that it applies to those exchange proposals filed after October 21, 1976. With the exception of State exchanges, all proposals filed prior to October 21, 1976, were terminated upon the passage of the Federal Land Policy and Management Act. Non-Federal proponents were given the opportunity to have their proposals processed under the procedures for exchanges established by the Federal Land Policy and Management Act. Proposals for State exchanges filed prior to October 21, 1976, will be processed in accordance with the regulations in effect on October 20, 1976.

A comment on the handling of exchange proposals pending at the time this rulemaking becomes effective wanted language included in the rulemaking that would require pending proposals to be processed in accordance with the administrative guidelines published after the passage of the Federal Land Policy and Management Act and not under this rulemaking. The comment expressed concern that pending proposals might have to start at the beginning of the exchange process if some language were not included that would permit them to continue. No change has been made in the section, but those proposals pending on the date of the issuance of this rulemaking will continue to be handled in accordance with the previously established procedures and administrative guidelines and this rulemaking. The administrative guidelines were issued pursuant to the Federal Land Policy and Management Act to allow orderly land management activity to continue while regulations were being promulgated. The issuance of this final rulemaking will not cause a duplication of effort on any pending exchange.

Definitions—A comment suggested that the term "conveyance" be defined in the final rulemaking. The suggestion was based on the fact that the term was used throughout the rulemaking and its meaning was not clear. The suggestion has not been adopted. The term has a clearly understood meaning, one that is accepted for land transactions. The comment appeared to be concerned about the type of conveyance document that would be issued by the United States rather than a lack of understanding of what "conveyance" means. At the time an exchange is consummated, the United States will issue either a patent if the land has never been in non-Federal ownership or another document of conveyance if the lands have previously been in non-Federal ownership. The type of conveyance document will be discussed prior to issuance.

Another comment on the definition section recommended that the term "person" be broadened to include an Indian tribe so that a tribe could participate in land exchanges. This comment has not been adopted because the term "person" is broad enough to include an Indian Tribe that is authorized by law to exchange land as expressed in 25 CFR 120a.2(b).

A couple of comments made recommendations for changes in the definition of the term "exchange." One of the comments wanted the words "private owner" changed to "person" so that the term would be consistent with other definitions. A second comment requested that the words "of lands and interests therein" be included in the definition to make clear what was being conveyed by the exchange. These two suggestions were adopted and the definition of the term "exchange" has been rewritten and clarified in the final rulemaking.

A couple of comments were concerned that someone below the District Manager might be delegated to act as the authorized officer and wanted the definition of the term "authorized officer" amended to limit the delegation to the District Manager level. The term "authorized officer" has not been changed. The Bureau of Land Management will delegate exchange authority to the District Manager and there are no plans to delegate decision authority below that level.

A final comment on the definition section suggested the addition of the term "segregation," because the term appears several times in the rulemaking and its definition would clarify the rulemaking. The term "segregation" has been defined in the final rulemaking.

Policy—A comment on this section correctly pointed out that paragraph (a) of section 2200.0–6 is procedural and should not be included in the policy section. As a result of the comment, paragraph (a) has been deleted from the policy section and now appears as section 2201.2 in the final rulemaking.

Another comment on the policy section expressed the view that the regulations should set out certain responsibilities of the Bureau of Land Management under existing Executive Orders. This suggestion has not been adopted. There are a number of Executive Orders that place responsibilities on the Bureau of Land Management in its role as manager of the public lands. Those responsibilities will be reflected in the manual sections on this subject rather than in this rulemaking.

Scope—A comment on the scope section raised questions about the status of lands that will be acquired under the authority of section 206 of the Federal Land Policy and Management Act. As the comment noted, prior to the passage of the Federal Land Policy and Management Act, lands that were acquired by exchange assumed the same character as the lands that passed into non-Federal ownership through the exchange. Public domain lands were exchanged for lands that became public domain lands and acquired lands were exchanged for lands that became acquired lands. Under section 206, all lands acquired by exchange assume the nature of public lands as that term is defined in the Federal Land Policy and Management Act. As a result, there is no need to refer in the rulemaking to the special nature of lands acquired under the procedure established in the rulemaking.

One comment suggested that the scope section be rewritten to specifically include the authorities covered by subparts 2212, 2271 and 2272, and parts 2240 and 2250 and to delete those parts and subparts from title 43. This suggestion has not been adopted because each of the mentioned parts and subparts has unique provisions that are a result of their specific legislative mandate and that authority is not provided by the Federal Land Policy and Management Act, the basis of this rulemaking.

In response to a comment asking for clarification on the point, a new paragraph has been added to the scope section of the final rulemaking which makes it clear that interests in the surface and subsurface estate may be exchanged independently of one another

if such exchange is found to be in the public interest.

Lands Subject to Disposal by Exchange—Several comments made the observation that it is impossible to specifically address exchanges with any degree of accuracy in the normal planning process except to identify lands that the United States wishes to dispose of or acquire under the provisions of the Federal Land Policy and Management Act. In recognition of this fact, the final rulemaking has been amended to make it clear that lands found suitable for disposal under the planning system may be exchanged under the procedure established by this rulemaking. The amendment process of the planning system does permit a specific finding that lands are suitable for disposal by exchange. In most instances, the normal planning process will be used and a management decision will be made to use lands identified as suitable for disposal as lands for an exchange.

A sizable number of comments pointed out the erroneous numbering of subsection (6) in § 2200.1 of the proposed rulemaking. This has been corrected. Some of those same comments also wanted subsection (c)(6) amended to provide a specific comment period. While this suggestion has not been adopted, § 2201.1(e), which does provide for a specific comment period, has been amended to increase the period for comments to 45 days.

One comment on this section wanted clarification of the assumption that the notice of realty action would not be published until the completion of a decision document under the provisions of the National Environmental Policy Act. An environmental analysis document in the form of either an environmental assessment or environmental impact statement will be completed on an exchange before the publication of the notice of realty action. This will be done in one of several ways. An environmental assessment or environmental impact statement is completed for each planning unit as part of the planning process provided for by subpart 1601 of this title. If the lands covered by the proposed exchange have been addressed in a current land use plan and found suitable for disposal, a determination will be made as to whether further environmental assessment is required when the lands are offered for exchange. If the lands are not covered in a current land use plan, an environmental assessment document will be completed during the process of amending the land use plan to accommodate the exchange. Therefore, an environmental assessment document will always be prepared prior to the publication of a notice of realty action covering an exchange, even though the environmental assessment may not be prepared immediately prior to publication of the notice.

Another comment on this section recommended the deletion of subsection (c)(4) of § 2200.1 from the proposed rulemaking. The reason given for this recommendation was that section 208 of the Federal Land Policy and Management Act excepts exchanges from the requirement to impose restrictions or covenants. Section 208 does exclude exchanges from its mandatory provisions. However, the public interest criteria of section 206 contains sufficient authority for the imposition of reservations, covenants or other restrictions that may be necessary to protect valid existing rights, the environment and the public health and safety.

A comment on this section suggested that the phrase "an offer to exchange lands" be substituted for the phrase "notice of realty action" because the notice of realty action is used in connection with other land disposal actions and notification of a pending exchange should be more specific. This suggestion has not been adopted and the notice of realty action continues as the instrument that will be used to notify the public of exchanges and other disposal actions by the Bureau of Land Management. Each notice of realty action will contain the information needed to enable the public to adequately assess the proposed action.

A final comment on this section recommended that paragraph (d) be deleted from the final rulemaking, or at the very least, that consideration of the unsuitability criteria of fee coal for disposal through exchange be discretionary rather than mandatory. This paragraph is just a reference to existing regulations in section 3437 of this title which prohibit the disposal of Federal coal in areas found to be unsuitable for mining. This rulemaking cannot be used to change existing requirements. If, in the future, section 3437 is changed, this paragraph will reflect those changes because the wording of the section has been amended to make it clear that the requirements of section 3437 will be applied.

Lands Subject to Acquisition by Exchange—Several comments were dissatisfied with the requirement of the rulemaking that exchange should be limited to the same state. This limitation is imposed by section 206 of the Federal Land Policy and Management Act and cannot be changed by rulemaking.

It was suggested by a comment that language be added to this section requiring that lands to be acquired by the United States through an exchange be determined suitable for acquisition under the land use planning provisions contained in subpart 1601 of this title. This suggestion has been adopted and the final rulemaking amended accordingly.

One comment asked how an appraiser would identify the acreage to be acquired for the purpose of established fair market value when an exchange is for unsurveyed school sections. Ordinarily, such acreage will be identified through reference to approved protraction diagrams.

Lands Acquired by Exchange—A number of comments on this section suggested that publication of the notice of realty action in the Federal Register should be discretionary with the authorized officer. Other comments suggested that the notice should be published only in the Federal Register or not at all. The Secretary of the Interior is required to give the public adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands. Publication in the Federal Register is constructive public notice of a pending disposal of public lands. The publication of the notice in the local papers will give the public in the area of the action a better opportunity to be aware of and participate in the action. No change has been made in the publication requirements of the final rulemaking.

Notice of Realty Action—A number of comments made the point that the section did not provide specific instructions as to which office would consider the public comments received in response to the notice of realty action. The section has been amended to provide a 45 day comment period and specific language as to where the comments should be sent and how they would be handled during the review process.

A few comments complained about length of time required for the publication of the notice of realty action in the Federal Register and local newspapers because a week would be lost in the process. This comment has been resolved by the addition of a requirement for a 45 day comment period. This will resolve all questions about the length of the comment period.

Several comments suggested including a provision allowing for an extension of the two-year segregation period if the exchange has not been completed within

the initial two-year segregation period. This suggestion was not adopted because the two-year period provided in the rulemaking should be adequate to complete the processing of an exchange. The notice of realty action should not be issued in connection with an exchange until sufficient action has been completed to determine if the exchange is in the public interest and can go forward. At this point, the remaining work on processing an exchange should be completed within the two-year period covered by the segregation.

One comment suggested that the rulemaking should provide discretion for the consideration of more than one proposal for an exchange of the same lands. The comment referred to an application for exchange, which is inappropriate in this rulemaking because there is no provision for an application for exchange. Further, the Secretary of the Interior has the discretion to determine which, if any, proposal for exchange should be accepted and processed. The suggested change has not been adopted.

A comment suggested that Federal interests such as mineral interests in the non-Federal lands that are subject to an exchange be segregated by the notice of realty action. The language in the proposed rulemaking is broad enough to allow for this type of situation. However, the section has been amended by the addition of a sentence to make it clear that such a segregation can be made.

It was suggested by a comment that language stating that the segregative effect terminates "upon issuance of patent or other document of conveyance to such lands," be added to those items in paragraph (b) of section 2201.1 that cause the termination of the segregative effect on lands covered by a notice of realty action. This result would follow as a matter of law as to those lands or interests the title to which was conveyed by the United States. However, for the sake of clarity, this suggestion has been adopted and the recommended language has been added to the final rulemaking.

Several comments inquired as to whether it would be necessary or appropriate to segregate the mineral and other interests in the lands covered by an exchange if the minerals or other interests are to be reserved to the United States or their use would not interfere with the exchange. After considering the issue raised by the inquiry, paragraph (b) of section 2201.1 of the final rulemaking has been amended to make the segregation action discretionary rather than mandatory and to make it clear that applications would be returned only if they involve uses covered by the segregation.

One comment wanted to know if, following the termination of the segregative effect, an opening order is necessary to open the lands to the public land laws. The answer is that publication of an opening order at the end of the two year period is necessary to open the public lands covered by a segregation to entry and to allow notation of the public land records. The publication of the opening order will give all members of the public an equal opportunity to enter the public lands in question.

The comments suggested that paragraph (c) of § 2201.1 is inconsistent with the requirements of section 402(g) of the Federal Land Policy and Management Act. Section 402(g) has been interpreted as requiring that notice be given in those instances when the permit or lease is cancelled in its entirety. In most instances, the notice of realty action, which will be constructive notice to a grazing permittee or lessee, will be published about two years prior to completion of action on an exchange. In every instance, the authorized officer will attempt to notify all users, including grazing users, of a proposed exchange at the earliest possible time in the process. In this same vein, a comment wanted to know what might constitute an "emergency." The word "emergency" is taken from section 402(g) of the Act and would be a situation where the national interest is involved and the lands are needed for the national interest on a short term basis, such as the building of a defense installation in time of war or national danger.

Two new paragraphs have been added to the section on notice of realty action as a result of questions raised in several comments about the adequacy of the notice. New paragraph (d) includes new information that must be included in the notice to give the public information needed to adequately comment on the proposed exchange. The information required by the paragraph reflects needs identified in the comments. New paragraph (e) is a rewritten version of the section called Notification in the proposed rulemaking. It requires that the notice be sent to individuals who have a specific interest in the lands subject to the exchange. This paragraph provides for personal service to those individuals and enhances their opportunity to comment on the proposed exchange. The provisions in both of these paragraphs should increase the public participation in the exchange process and result in better decisions.

Notification—Several comments suggested that this section be amended to add additional parties that must be notified about a proposed exchange. After studying the comments, it was determined that the requirements contained in the section were more properly a part of the notice of realty action section and, as stated earlier, the requirements contained in the section have been amended and added to the notice of realty action section of the final rulemaking.

The number for the section on notification, section 2201.2, is used in the final rulemaking for a new section on proposals. As discussed earlier, the procedural language of the policy section of the proposed rulemaking has been amended and moved to this new section. The new proposal section provides a complete procedure for consideration of exchange proposals, including a protest to the State Director by a proponent whose proposal has been found non-acceptable. Included in the review of an exchange proposal will be consideration of the availability of personnel and funds to carry out the exchange. As a policy, exchanges are a valuable component of Bureau land activity, however, they are extraordinary actions, and decisions concerning exchanges may be affected by personnel and budget limitations.

Appraisals—A comment on this section wanted the rulemaking to set a definite date when the valuation of the property subject to the exchange would be set and recommended the date of the publication of the notice of realty action. This recommendation has not been adopted because the valuation of the property must be equal, or equalized by the payment of the difference in valuation, at the date the exchange is made. The rulemaking provides for equalization on the date of the exchange and no change has been made.

Legal Description of Property—The comments on this section of the proposed rulemaking expressed concern about the limits placed on the legal description of Federal lands that can be used for the purposes of this rulemaking. The comments pointed out that the section did not appear to consider special survey situations on the public lands. There has been no change in the requirements as they relate to Federal lands since public lands cannot be transferred out of Federal ownership until they have been surveyed, unless there is specific authority to do so, such as is provided in the Alaska Native Claims Settlement Act for transfer of lands to the Alaska Natives.

In response to comments about the requirements for the legal description of

non-Federal lands considered for an exchange, the rulemaking has been amended to give additional latitude in the description that may be submitted, especially as it relates to lands that may have been transferred from Federal ownership under special authority without having been surveyed.

Final Requirements—One of the comments on this section objected to requirement that the non-Federal party to an exchange furnish acceptable evidence of title evidence before the Federal Government issues a document of conveyance. The comment suggested that the rulemaking provide a mechanism, such as a third party escrow, that would allow for simultaneous exchange of title evidence or the furnishing of an unexecuted deed for examination. This suggestion was not adopted. The concern raised by the comment is met by the provision in § 2201.7(b) which covers the question of what happens if the exchange is not consummated.

It was pointed out in one of the comments that some corporations do not have corporate seals because the State law in the State where they are located does not require them to have a seal. In recognition of this fact, the final rulemaking has been amended to cover the situation where a corporation has no seal.

A few comments expressed concern about the requirements in the rulemaking for acceptable title and requested some flexibility beyond that provided in the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States." The rulemaking contains sufficient flexibility to meet the concerns of those commenting on this subject and no change has been made. A related comment suggested that the rulemaking be amended to include a guide as to the preparation of conveyance documents submitted to the United States. In response to this comment, the final rulemaking has been amended to provide such guidance.

A couple of comments wanted to include other entities in the provision that allows States that are exchanging lands that have never been in private ownership special rights as to the title evidence they are required to furnish. This special right is in recognition of the close cooperative relationship between the States and the Department of the Interior and is not extended to other entities by the final rulemaking.

A comment suggested that language be added to the rulemaking that provides for relinquishment of a State's inchoate rights to unsurveyed school sections when those sections are used by a State in an exchange. This suggestion has been adopted and language added in the final rulemaking.

A final comment on the section on final requirements pointed out that there is authority other than the Federal Land Policy and Management Act for making exchanges and the rulemaking does not provide a way for that to be shown. This comment was well taken and the section has been amended by the addition of language in several places requiring the statement of the authority for the exchange.

Exchange Agreement—Several of the comments on this section pointed out that a binding agreement cannot be entered into until rather late in the exchange process and questioned its value. It is clear that no party would enter into an agreement if there were several unknown factors. For this reason, if an agreement is made it will be at the time final appraisals have been approved and the exchange is otherwise in order. Entering into an agreement is not mandatory. The value of the agreement is that it binds all parties once all conditions have been determined. No change has been made in the final rulemaking as a result of these comments.

One comment suggested the addition of the words "no physical" to the last sentence in this section to make it clear that the loss or damage being considered was physical loss or damage. This comment was not adopted because the last sentence in section 2201.6 of the proposed rulemaking has been deleted since its requirements can be provided for in the exchange agreement itself.

A comment questioned the enforceability of the exchange agreement. The agreement can be enforced by either party through the courts.

Acceptance of Conveyance and Removal of Improvements—The one comment on this section wondered if the United States would want to have private improvements that were part of the basis of the valuation remain on the property after the exchange. If the improvements are part of the realty and were included in the valuation, they will be retained on the exchanged lands. Other improvements will be removed, since they would not have been part of the valuation.

Language has been added to this section to assure that the Governor and heads of affected local governments are notified when a conveyance of public lands is made as part of an exchange.

Title Evidence—The comments suggested that the language of this section does not relate to title evidence and should be placed under the exchange agreement provisions of the rulemaking. This suggestion was not adopted because the language of the section relates to a disclaimer of any right attaching to the United States' title to the public lands in an exchange prior to the issuance of the patent or other deed of conveyance.

One comment suggested eliminating the provision for return of title evidence and issuance of a quit-claim deed to a non-Federal party to an exchange where the deed has been recorded, because the action of the United States in accepting and recording the deed limits its authority to terminate the exchange. This suggestion has not been adopted because it is clear the United States can terminate the exchange for good cause even as late as the time of acceptance and recording of the deed. Editorial changes and corrections have been made as necessary.

The principal author of this rulemaking is David C. Hemstreet, Division of Land Resources and Realty, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

(Sections 205, 206 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1740), Group 2200, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below)

Guy R. Martin,

Assistant Secretary of the Interior.

December 31, 1980.

1. Part 2200 is revised to read as follows:

PART 2200—EXCHANGES—GENERAL PROCEDURES

Subpart 2200—Exchanges—General

Sec.

2200.0–1 Purpose.
2200.0–2 Objective.
2200.0–3 Authority
2200.0–4 Responsibilities.
2200.0–5 Definitions.
2200.0–6 Policies.
2200.0–7 Scope.
2200.1 Lands subject to disposal by exchange.
2200.2 Lands subject to acquisition by exchange.
2200.3 Lands acquired by exchange.

Subpart 2201—Exchanges—Specific Procedures

2201.1 Notice of realty action.
2201.2 Proposals.
2201.3 Appraisals.

2201.4 Legal description of properties.
2201.5 Final requirements.
2201.6 Exchange agreement.
2201.7 Acceptance of conveyance and removal of improvements.
2201.8 Title evidence.

Subpart 2202—Exchanges—National Forest Exchange

2202.1 Applicable Regulations.

Authority: Secs. 205, 206, 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732 and 1740)

Subpart 2200—Exchanges—General

§ 2200.0-1 Purpose.

This part 2200 sets forth procedures for the exchange of public lands or interests therein for non-Federal lands and interests therein.

§ 2200.0-2 Objective.

The objective is the acquisition and disposal of lands and interests therein for the benefit of the public interest as provided in Part 1601 of this title, through use of the exchange authority granted by the Federal Land Policy and Management Act of 1976. When considering public interest, full consideration will be given to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals and fish and wildlife. There must also be a finding that the values and objectives which Federal lands and interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands and interests and the public objectives they could serve if acquired.

§ 2200.0-3 Authority.

These regulations are issued under the authority of sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732 and 1740), and apply to any proposed exchange filed after October 21, 1976.

§ 2200.0-4 Responsibility.

The Bureau of Land Management shall carry out the responsibilities of the Secretary of the Interior under these regulations.

§ 2200.0-5 Definitions.

As used in this part, the term:

(a) "Secretary" means Secretary of the Interior.

(b) "Person" means any person or entity legally capable of conveying and holding land and interests therein, under the laws of the State within which the land or interests therein are located. A person shall be a citizen of the United States, or in the case of a corporation, shall be subject to the laws of any State or of the United States.

(c) "Public lands" means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) "Lands" means any land and interests therein.

(e) "Notice of realty action" means publication of a determination as set out in § 2201.1 of this title, that certain lands are suitable for disposal by exchange under specified laws.

(f) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(g) "Exchange" means a conveyance of lands and interests therein from the United States to a person at the same time there is a conveyance of lands and interests therein from the person to the United States.

(h) "Equal value exchange" means an exchange of lands, or interests therein, where fair market value appraisals show that the interests being exchanged are of equal value.

(i) "Money equalization" means balancing the differences in the fair market value of the properties by a money payment made by either party.

(j) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of the Interior of regulatory authority as conferred by law to allow for the orderly administration of the public lands.

§ 2200.0-6 Policy.

(a) Exchange proposals shall meet policy objectives of the Federal Land Policy and Management Act and shall comply with all applicable Federal statutes, regulations and executive orders.

(b) Exchanges of interests in lands shall be considered on a case-by-case basis.

§ 2200.0-7 Scope.

(a) These regulations apply to all exchanges involving public lands and interests therein administered by the Secretary, through the Bureau of Land Management, except where an exchange is specifically authorized by Subparts 2212, Part 2240, Part 2250, and Subparts 2271, 2272, 2273 and 2274, noted in the regulations of Group 2200 of this title.

(b) Qualified requests for fee coal exchanges made under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)) and as provided in subpart 3437 of this title shall be processed in accordance with this part, except as otherwise provided in subpart 3437 of this title.

(c) These regulations apply to the exchange of interests, such as mineral estate interests, separate and apart from the surface estate in either Federal or non-Federal lands.

§ 2200.1 Lands subject to disposal by exchange.

(a) Public lands may be disposed of by exchange under this part only if their disposal is in conformance with the land use planning provisions contained in subpart 1601 of this title.

(b) The public lands to be exchanged shall be located in the same State as the non-Federal lands or interests to be acquired.

(c) A determination that lands have been found suitable for disposal by exchange shall be evidenced by the issuance of a notice of realty action. The notice of realty action shall contain: (1) A description of both the Federal and non-Federal lands proposed to be exchanged; (2) the identity of the party(s) with whom the exchange will occur; (3) the terms and conditions of the exchange; (4) any reservations, terms, covenants and conditions necessary to insure proper land use and protection of the public interest; (5) the intended time of the exchange; and (6) an opportunity for public comment.

(d) As part of the consideration of whether public interest would be served by disposal of fee coal through exchange, the applicability of unsuitability qualifications of Subpart 3461 of this title to the Federal lands are relevant and will be applied.

§ 2200.2 Lands subject to acquisition by exchange.

(a) Non-Federal lands and interests therein may be acquired only when their acquisition is consistent with the mission of the Department of the Interior. Both the non-Federal and public lands and interests therein shall be located in the same State.

(b) Acquisition of lands by exchange under this part may be made only if their acquisition is in conformance with land use planning provisions under subpart 1601 of this title.

(c) Unsurveyed school sections are considered as "non-Federal" lands and may be used by the State in an exchange. However, minerals shall not be reserved by the State when unsurveyed sections are used in an exchange. As a condition of the exchange, the State shall have waived all rights to unsurveyed sections used in the exchange.

§ 2200.3 Lands acquired by exchange.

(a) Lands and interests in lands acquired by exchange shall, upon acceptance of title by the authorized officer, become public lands. Such public lands are not available for location under the mining laws of application for sale, entry or mineral leasing. A notice of their availability shall be published in the Federal Register. The notice shall state the date and time of their availability and the forms of authorization. Such availability shall be noted on the public land records.

(b) Lands and interests in lands acquired by exchange within a grazing district established under section 1 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), shall become a part of that district.

(c) Lands and interests in lands acquired within the National Forest System may be transferred to the Secretary of Agriculture by the Secretary and thereby become National Forest System lands subject to all laws and regulations applicable to other National Forest System lands.

(d) Lands and interests in lands acquired under provisions of section 206 of the Federal Land Policy and Management Act and located within the National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails or any other Federal land System established by an Act of Congress may be transferred by the Secretary to the appropriate agency for administration in accordance with the laws, rules and regulations applicable to that system.

(e) The acquisition procedures for non-Federal lands and interests therein to be acquired by exchange shall be in strict adherence with applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

Subpart 2201—Exchanges—Specific Requirements

§ 2201.1 Notice of realty action.

(a) A notice of realty action offering to exchange certain lands which have, through the public land use planning process of the Bureau of Land Management, been determined suitable for acquisition and disposal by exchange, shall be published in the Federal Register and shall be published once a week for 3 weeks thereafter in a newspaper of general circulation in the area of the lands to be acquired and the lands to be disposed of by a proposed exchange. The notice shall provide 45 days after the date of issuance for comments by the public and interested parties. Comments on the notice of realty action shall be sent to the office issuing the notice.

(b) The publication of the notice of realty action on an exchange proposal in the Federal Register may segregate the public lands covered by the notice of realty action to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the notice segregates the lands from the use applied for in the application. The segregative effect of the notice of realty action on the public lands shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the Federal Register of a termination of the segregation or 2 years from the date of its publication, whichever occurs first. Any prior reserved Federal interests in the non-Federal lands may be segregated by the notice of realty action to the same extent the public lands are segregated.

(c) When the exchange of a tract of public lands requires the cancellation of a grazing permit or lease in its entirety notice shall be given the permittee or lessee 2 years prior to disposal except in cases of emergency. A permittee or lessee may unconditionally waive the 2-year notice (see 43 CFR 4110.4–2(b)). The publication of a notice of realty action shall constitute notice to the grazing permittee or lessee if notice has not been previously given. No public lands in a grazing lease or permit may be conveyed until the provisions of Part 4100 of this title concerning compensation for any authorized improvements have been met.

(d) The notice of realty action shall list all reservations to be included in the conveyance to and from the United States, including, where the Federal lands are encumbered by a mineral lease or permit, a reservation to the United States for the duration of the mineral lease or permit of the mineral or minerals covered by the lease or permit.

(e) The notice of realty action shall be sent to the Governor of the State within which the public lands are located, the head of the governing body of any political subdivision having zoning or other land use regulatory responsibilities in the geographic area within which the public lands are located and the head of any political subdivision having administrative or public services responsibility in the geographic area within which the public lands are located not less than 60 days prior to the exchange of titles. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current or past land users.

§ 2201.2 Proposals.

(a) Exchange proposals may be submitted by a person who owns lands or interests in lands, by non-Federal entities, by Federal departments or agencies or by the Bureau of Land Management. When an exchange proposal is made to the Bureau of Land Management, it shall be made in writing to the District Manager for the district in which the Federal lands are located. The authorized officer shall publish a notice of initiation or receipt of an exchange proposal within 10 days of initiation or receipt of such proposal.

(b) An exchange proposal may, if found by the authorized officer to be in accordance with Bureau of Land Management policies, programs and the regulations in this part, be the basis of publication of a notice of realty action as provided in § 2201.1 of this title.

(c) Where an exchange proposal is not accepted by the authorized officer and made the basis of a notice of realty action, the proponent shall be so advised in writing with a statement of the reason(s) for the non-acceptance and advised of the availability of a protest to the State Director.

(d) If requested in writing by the proponent within 30 days of the mailing of the notification of non-acceptance, the decision of non-acceptance of the authorized officer shall be reviewed by the State Director to determine if it is in accordance with the Bureau of Land Management policies, programs and the regulations in this part. Such review shall be completed by the State Director and the proponent notified in writing of the action taken within 60 days of receipt of the written request by the State Director.

§ 2201.3 Appraisals.

Appraisals to determine current fair market value of lands and interests in lands to be exchanged shall be in accordance with the principles in the Interagency Department of Justice publication entitled "Uniform Appraisal

Standards for Federal Land Acquisition." Final determination of the value of lands and interests in lands proposed for exchange by either party rests with the Secretary.

§ 2201.4 Legal description of property.

The public lands and interests in public lands proposed for exchange shall be properly described and locatable under the survey laws and standards of the United States. The non-Federal lands may be described as part of a surveyed section or by a metes and bounds survey, tied to a township, range, meridian, and State, or may be described by the description contained in an approved protraction diagram of the Bureau of Land Management.

§ 2201.5 Final requirements.

At the end of the period provided in the notice of realty action and upon a determination by the authorized officer that a particular exchange is acceptable, the owner or holder of the non-Federal land and interest shall provide the following:

(a) *Evidence of title acceptable to the authorized officer.* (1) For private land owners, any one of the documents set forth in the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" (Department of Justice, 1970 ed.) that is acceptable to the authorized officer.

(2) For States, if the property was ever held in private ownership, a certificate of title as prescribed in § 2201.5(a)(1). If lands and interests in lands have not been in private ownership, either of the following shall be acceptable evidence of title: (i) A certification by the appropriate State officer that the property has not been sold or otherwise encumbered and a certification under the official seal of the recorder of deeds or other appropriate State officer that no instrument has been recorded or filed that would encumber title to the property or (ii) a certification by an abstractor or abstract company that no instrument has been recorded or filed that conveyed or would encumber title to the property.

(b) *Conveyance Documents.* All deeds to the United States shall be prepared in accordance with "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies" (Department of Justice, 1968 ed.). (1) Private property owners shall submit a warranty deed or other document of conveyance which meets Department of Justice title standards for property acquired by the United States conveying the privately-owned property to the United States, and stating that the deed is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976. Deeds shall be executed, acknowledged and recorded in accordance with the laws of the State in which the lands are located.

(i) Any revenue stamps required by State law shall be affixed to the deed and cancelled.

(ii) A deed executed by an individual grantor shall disclose the marital status of the grantor. A married grantor shall join with the spouse to execute a deed to bar any right of courtesy, dower, community interest or any other claim to the property conveyed unless written evidence is submitted that shows that under the laws of the State where the conveyed property is located the grantor's spouse has no present or prospective interest in the lands.

(iii) Any deed executed by a partnership, association or other entity other than a corporation shall corrborate that the deed is executed pursuant to the articles of association or partnership or other similar document creating the entity. If there are none or if signing authority is not provided for in the document, the deed shall be signed by each member of the entity and each signor shall furnish a statement that he/she is a member. The deed shall state that it is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976.

(iv) Any deed executed by a corporation shall corroborate that the deed is executed pursuant to its bylaws or a resolution or order by the corporation's board of directors or other governing body. A copy of the bylaws, resolution or order shall accompany the deed and shall, unless not required by State law, bear the corporate seal. Where State law does not require such seal evidence, a citation of applicable State law shall be provided. The deed shall state that it is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976.

(2) States shall submit a deed of conveyance that includes a statement that the deed is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976. The deed shall be executed, acknowledged and recorded in accordance with the laws of the State. A certification that the State officer executing the conveyance is authorized to do so under State law shall accompany the deed. When unsurveyed sections are used as exchange lands by a State, the exchange shall constitute a relinquishment of the State's right to the unsurveyed sections used in the exchange.

(c) *Taxes and equalizing money.* (1) Where taxes constitute a lien on the non-Federal property, the owner of the non-Federal land or interest shall furnish a bond with a qualified surety or other security acceptable to the authorized officer for an amount at least 20 percent in excess of taxes paid on the property for the previous year or assure payment of taxes by making a money deposit to the authorized officer in like amount. When evidence of payment of taxes acceptable to the authorized officer is furnished, the bond shall be released or the cash returned to the owner of the non-Federal lands and interests.

(2) A money payment for equalization of value shall not exceed 25 percent of the value of the public lands and interests being conveyed, but the amount of the money payment shall be reduced to as small an amount as possible.

§ 2201.6 Exchange agreement.

An exchange agreement may be entered into between the Bureau of Land Management, as represented by the authorized officer, and exchange party. The agreement shall identify the lands or the estate to be exchanged, all reservations and outstanding interests, any necessary cash equalization and all other terms, conditions, covenants and reservations.

§ 2201.7 Acceptance of conveyance and removal of improvements.

(a) *Acceptance of conveyance.* If the title and other evidence required of the owner of the non-Federal lands and interests in lands are in conformity with the law and regulations, the authorized officer may accept title to the non-Federal property conveyed to the United States. A patent or other document of conveyance for the property exchanged shall be issued and a notice of the issuance of said conveyance documents shall be published in the Federal Register. The Governor and the head of local governments shall be immediately notified of the issuance of conveyance documents for public lands located within their respective jurisdictions. A money payment, if required to equalize values, shall be made by the appropriate party prior to or at the date of conveyance.

(b) *Removal of improvements.* If any buildings, fencing or other movable improvements owned or erected by a party to an exchange on the non-Federal lands conveyed are not a part of the exchange proposal, the party may remove such improvements from the lands upon receipt of notice that the exchange has been approved: *Provided,* That such removal is accomplished with in the period specified in the notice or any reasonable extension that may be granted by the authorized officer.

(c) *Other improvements.* Where public lands to be conveyed under this part contain authorized improvements, other than those identified in § 2201.1(c) or those subject to patent reservation, the owner of such improvements shall be given an opportunity to remove them if such owner is not the exchange party, or the exchange party may compensate the owner of such authorized improvements and submit proof of compensation to the authorized officer.

§ 2201.8 Title evidence.

(a) If no exchange agreement is entered into, no action taken prior to issuance of patent or other document of conveyance shall establish any contractual or other rights against the United States, or create any contractual or other obligation of the United States.

(b) If a party to a prospective exchange has submitted title evidence in connection with an exchange and processing of the proposal is terminated and the exchange will not be proposed again in the near future, the title evidence shall be returned to the exchange party. Where the deed has been recorded, a quitclaim deed for the land conveyed to the United States shall be issued under section 6 of the Act of April 28, 1930 (43 U.S.C. 872).

Subpart 2202—Exchanges—National Forest Exchange

§ 2202.1 Applicable regulations.

(a) All proposals for exchange for the consolidation or extension of national forests, under the authority and provisions of the Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C. 485) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) shall be filed with the appropriate officer of the Forest Service, U.S. Department of Agriculture, in compliance with the regulations in 36 CFR Part 254.

(b) The filing of a notice of an offer for forest exchange with the authorized officer and the notation of such proposed exchange on the public land records shall segregate the National Forest System lands included in the proposed exchange from appropriation, location or entry under the general mining laws but not from the applicability of those public land laws governing the use of the National Forest System under leases license or permit, or governing the disposal of mineral or vegetative resources, other than under the general mining laws. The segregative effect of the offer notation on the public land records shall terminate upon issuance of patent or other document of conveyance to such lands, upon rejection or denial of the exchange offer or 2 years from the date of the notation whichever occurs first.

PART 2091—SPECIAL LAWS AND RULES

§ 2091.2-3 [Removed]; §§ 2091.2-4 and 2091.2-5 [Renumbered as §§ 2091.2-3 and 2091.2-4]

2. Subpart 2091 is amended by the removal of §§ 2091.2-3 and the renumbering of §§ 2091.2-4 and 2091.2-5 and §§ 2091.2-3 and 2091.2-4 respectively.

PART 2210—STATE EXCHANGES

§§ 2211.0-3—2011.2 (Subpart 2211) [Removed]

3. Part 2210 is amended to remove Subpart 2211 in its entirety.

§ 2212.1 [Amended]

PART 2240—NATIONAL PARK SYSTEM EXCHANGES

§ 2240.1 [Amended]

PART 2250—WILDLIFE REFUGE EXCHANGES

§ 2250.1 [Amended]

PART 2270—MISCELLANEOUS EXCHANGES

§ 2273.0-3 [Amended]

4. Sections 2212.1 in Subpart 2212, § 2240.1 in Part 2240, § 2250.1 in Part 2250 and § 2273.0-3(b)(3) in Subpart 2273 are amended by removing the words "in § 2200.0-8" and adding the words "in Part 2200" after the words "with the regulations" in the last sentence.

PART 2220—PRIVATE EXCHANGES UNDER TAYLOR GRAZING ACT [REMOVED]

PART 2230—NATIONAL FOREST EXCHANGES [REMOVED]

PART 2260—O & C EXCHANGES [REMOVED]

5. Parts 2220, 2230 and 2260 are removed in their entirety.

PART 2270—MISCELLANEOUS EXCHANGES

§ 2271.1 [Amended]

6. Section 2271.1 in Subpart 2271 is amended to make the last sentence of this section read as follows: "Any such transactions shall be handled in a manner consistent with the applicable statutes and with the general regulations in Part 2200."

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 9 and 2920

[Circular No. 2483]

Leases, Permits, and Easements; Land Use Authorizations Under the Federal Land Policy and Management Act

Under the authority of section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732), Subtitle A and Group 2900, subchapter B, Chapter II, Title 43 of the Code of Federal Regulations are amended as set forth below.

PART 9—LEASES, PERMITS, AND EASEMENTS FOR PUBLIC WORKS [REMOVED]

1. Subtitle A is revised by removing Part 9 in its entirety.

2. Group 2900 is amended by revising Part 2920 as follows:

Part 2920—LEASES, PERMITS AND EASEMENTS

Subpart 2920—Leases, Permits and Easements—General Provisions

Sec.

2920.0–1 Purpose.
2920.0–3 Authority.
2920.0–5 Definitions.
2920.0–6 Policy.
2920.1 Uses authorized.
2920.2 Procedures for public-initiated land use proposals.
2920.2–1 Discussion of proposals.
2920.2–2 Minimum impact permits.
2920.2–3 Other land use proposals.
2920.2–4 Proposal content.
2920.2–5 Proposal review.
2920.3 Bureau of Land Management initiated land use proposals.
2920.4 Notice of realty action.
2920.5 Application procedure.
2920.5–1 Filing of applications for land use authorizations.
2920.5–2 Application content.
2920.5–3 Application review.
2920.5–4 Competitive or non-competitive bias.
2920.5–5 Application processing.
2920.6 Reimbursement of costs.

Sec.

2920.7 Terms and conditions.
2920.8 Fees.
2920.9 Supervision of the land use authorization.
2920.9–1 Construction phase.
2920.9–2 Operation and maintenance.
2920.9–3 Termination and suspension.

Authority: Sec. 302, Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732).

PART 2920—LEASES, PERMITS, AND EASEMENTS

Subpart 2920—General Provisions

§ 2920.0–1 Purpose.

The purpose of the regulatons in this part is to establish procedures for the orderly and timely processing of proposals for non-Federal use of the public lands. The procedural and informational requirements set by these regulations vary in relation to the nature of the anticipated use.

§ 2920.0–3 Authority.

Sections 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1740), authorize the Secretary of the Interior to issue regulations providing for the use, occupancy and development of the public lands through leases, permits and easements.

§ 2920.0–5 Definitions.

As used in this part, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(b) "Easement" means an authorization for a non-possessory, non-exclusive interest in lands which specifies the rights of the holder and the obligation of the Bureau of Land Management to use and manage the lands in a manner consistent with the terms of the easement.

(c) "Lease" means an authorization to possess and use public lands for a fixed period of time.

(d) "Permit" means a short-term revocable authorization to use public lands for specified purposes.

(e) "Land use proposal" means an informal statement, in writing, from any person to the authorized officer requesting consideration of a specified use of the public lands.

(f) "Land use plan" means resource management plans or management framework plans prepared by the Bureau of Land Management pursuant to its land use planning system.

(g) "Public lands" means lands or interests in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

(h) "Person" means any person or entity legally capable of conveying and holding lands or interests therein, under the laws of the State within which the lands or interests therein are located, who is a citizen of the United States, or in the case of a corporation, is subject to the laws of any State or of the United States.

(i) "Proponent" means any person who submits a land use proposal, either on his/her own initiative or in response to a notice for submission of such proposals.

(j) "Applicant" means any person who submits an application for a land use authorization under this part.

(k) "Casual use" means any short term non-commercial activity which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities.

(l) "Land use authorization" means any authorization to use the public lands issued under this part.

§ 2920.0–6 Policy.

(a) Land use authorizations shall be issued only at fair market value and only for those uses that conform with Bureau of Land Management plans, policy, objectives and resource management programs. Conformance with land use authorizations will be determined through the planning process and procedures provided in Part 1600 of this title.

(b) In determining the informational and procedural requirements, the authorized officer will consider the duration of the anticipated use, its impact on the public lands and resources and the investment required by the anticipated use.

§ 2920.1 Uses authorized.

Uses not specifically authorized under other laws or regulations and not specifically forbidden by law may be authorized; under this part. Uses which may be authorized include residential, agricultural, industrial and commercial uses, and uses which cannot be authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act. Land use authorizations shall be granted under the following categories:

(a) Leases shall be used to authorize uses of public lands involving substantial construction, development or land improvement and the investment of large amounts of capital which are to be amortized over time. A lease conveys a possessory interest and is revocable only in accordance with its terms and the provisions of § 2920.9–3 of this title. Leases shall be issued for a term,

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Circular Distribution List

determined by the authorized officer, that is consistent with the time required to amortize the capital investment.

(b) Permits shall be used to authorize uses of public lands for not to exceed 3 years that involve either little or no land improvement, construction or investment, or investment which can be amortized within the term of the permit. A permit conveys no possessory interest. It is renewable at the discretion of the authorized officer and may be revoked in accordance with its terms and the provisions of § 2920.9–3 of this title. Permits shall be issued on a form approved by the Director, Bureau of Land Management that has been filed by the applicant with the appropriate Bureau of Land Management office.

(c) Easements may be used to assure that uses of public lands are compatible with non-Federal uses occurring on adjacent or nearby land. The term of the easement shall be determined by the authorized officer. An easement granted under this part may only be for purposes not authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act.

(d) No land use authorization is required under the regulations of this part for casual use of the public lands.

§ 2920.2 Procedures for public initiated land use proposals.

§ 2920.2–1 Discussion of proposals.

(a) *Suggestions by land use proponent.* Any person who seeks to use public lands may contact the Bureau of Land Management office having jurisdiction over the public lands in question and discuss the land use proposal. This contact should be made as early as possible so that administrative requirements and potential conflicts with other land uses can be identified.

(b) *Response by the authorized officer.* The authorized officer will discuss with the land use proponent whether the requested land use, suitability or non-suitability of the requested land use based on a preliminary examination of existing land use plans, where available, is or is not in conformance with Bureau of Land Management policies and programs for the lands, local zoning ordinances and any other pertinent information. The authorized officer will discuss administrative requirements for the type of land use authorization which may be granted (lease, permit or easement), including, but not limited to: additional information which may be required; qualifications; cost reimbursement requirements; associated clearances, other permits or licenses which may be required; environmental and management considerations; and special requirements such as competitive bidding and identification of on-the-ground investigations which may be required in order to issue a land use authorization.

§ 2920.2–2 Minimum impact permits.

The authorized officer may, without publication of a notice of realty action, issue a permit for a land use authorization upon a determination that the proposed use is in conformance with Bureau of Land Management plans, policies and programs, local zoning ordinances and any other requirements and will not cause appreciable damage or disturbance to the public lands, their resources or improvements.

§ 2920.2–3 Other land use proposals.

(a) A proposal for a land use authorization, including permits not covered by § 2920.2–2 of this title, shall be submitted in writing to the Bureau of Land Management office having jurisdiction over the public lands covered by the proposal.

(b) The submission of a proposal gives no right to use the public lands.

§ 2920.2–4 Proposal content.

(a) Proposals for a land use authorization shall include a description of the proposed land use in sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use, the impacts if any, on the environment, the public or other benefits from the proposed land use, the approximate cost of the proposal, any threat to the public health and safety posed by the proposal and whether the proposal is, in the proponent's opinion, in conformance with Bureau of Land Management plans, programs and policies for the public lands covered by the proposal. The description shall include, but not be limited to:

(1) Details of the proposed uses and activities;

(2) A description of all facilities for which authorization is sought, access needs and special types of easements that may be needed;

(3) A map of sufficient scale to allow all of the required information to be legible and a legal description of primary and alternative project locations; and

(4) A schedule for construction of any facilities.

(b) The proposal shall include the name, legal mailing address and telephone number of the land use proponent.

§ 2920.2–5 Proposal review.

(a) A land use proposal shall, upon submission, be reviewed to determine if the public lands covered by the proposal are appropriate for the proposed land use and if the proposal is otherwise legal.

(b) If the proposal is found to be appropriate for further consideration, the authorized officer shall examine the proposal and make one of the following determinations:

(1) The proposed land use is in conformance with the appropriate land use plan and can be approved;

(2) The proposed land use has not been addressed in an existing land use plan and shall be addressed in accordance with the procedure in Part 1600 of this title;

(3) The proposed land use is in an area not covered in an existing land use plan and shall be processed in accordance with the procedure in § 1601.8 of this title; or

(4) The proposed land use is not in conformance with the approved land use plan. This determination may be appealed under 43 CFR 4.400 for review of the question of conformance with the land use plan.

(c)(1) If a proposed land use does not meet the requirements of this subpart or is found not to be in conformance with the land use plan, the authorized officer shall so advise the proponent and shall provide a written explanation of the reasons the proposed use does not meet the requirements of this subpart and/or is not in conformance with an existing land use plan.

(2) Where a proposed land use is determined not to be in conformance with an approved land use plan, with the land use plan, the authorized officer may consider the proposal for land use as an application to amend or revise the existing land use plan under part 1600 of this title.

§ 2920.3 Bureau of Land Management initiated land use proposals.

Where, as a result of the land use planning process, the desirability of allowing use of the public lands or providing increased service to the public from such use of the public lands is demonstrated, the authorized officer may identify a use for the public land and notify the public that proposals for utilizing the land through a lease, permit or easement will be considered.

§ 2920.4 Notice of realty action.

(a) A notice of realty action indicating the availability of public lands for non-Federal uses through lease, permit or easement shall be issued, published and sent to parties of interest by the authorized officer, including, but not limited to, adjoining land owners and current or past land users, when a determination has been made that such public lands are available for a particular use either through the submission of a public initiated proposal or through the land use planning process.

(b) The notice shall include the use proposed for the public lands and shall notify the public that applications for a lease, permit or easement shall be considered. The notice shall specify the form of negotiation, whether by competitive or non-competitive bidding, under which the land use authorization shall be issued. A notice of realty action is not a specific action implementing a resource management plan or amendment.

(c) The notice of realty action shall be published once in the Federal Register and once a week for 3 weeks thereafter in a newspaper of general circulation in the vicinity of the public lands included in the land use proposal.

(d) An application submitted before a notice of realty action is published shall not be processed and shall be returned to the person who submitted it. Return of an application shall not be subject to appeal or protest.

§ 2920.5 Application procedure.

§ 2920.5–1 Filing of applications for land use authorizations.

(a) Only after publication of a notice of realty action shall an application for a land use authorization be filed with the Bureau of Land Management office having jurisdiction over the public lands covered by the application.

(b) The filing of an application gives no right to use the public lands.

§ 2920.5–2 Application content.

(a) Applications for land use authorizations shall include a reference to the notice of realty action under which the application is filed and a description of the proposed land use in sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use, the impacts, if any, on the environment, the public or other benefits from the land use, the approximate cost of the proposed land use, any threat to the public health and safety posed by the proposed use and whether the proposed use is, in the opinion of the applicant, in conformance with the Bureau of Land Management plans, programs and policies for the public lands covered by the proposed use. The description shall include, but not be limited to:

(1) Details of the proposed uses and activities;

(2) A description of all facilities for which authorization is sought, access needs and special types of easements that may be needed;

(3) A map of sufficient scale to allow all of the required information to be legible and a legal description of primary and alternative project locations; and

(4) A schedule for construction of any facilities.

(b) Additional information:

(1) After review of the project description, the authorized officer may require the applicant(s) to fund or to perform additional studies or submit additional environmental data, or both, so as to enable the Bureau of Land Management to prepare an environmental analysis in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and comply with the requirements of the National Historic Preservation Act of 1966 (16 U.S.C. 470); The Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.); Executive Order 11593, "Protection and Enhancement of the Cultural Environment" of May 13, 1971 (36 FR 8921); "Procedures for the Protection of Historic and Cultural Properties (36 CFR Part 300); and other laws and regulations as applicable.

(2) An application for the use of public lands may require additional private, State, local or other Federal agency licenses, permits, easements, certificates or other approval documents. The authorized officer may require the applicant to furnish such documents, or proof of application for such documents, as part of the application.

(3) The authorized officer may require evidence that the applicant has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain and terminate the authorized land use.

(c) The application shall include the name and legal mailing address of the applicant.

(d) *Business Associations.* If the applicant is other than an individual, the application shall include the name and address of an agent authorized to receive notice of actions pertaining to the application.

(e) *Federal departments and agencies.* Federal departments and agencies are not qualified to hold land use authorizations under this authority.

(f) If any of the information required in this section has already been submitted as part of a land use proposal submitted under § 2920.2 of this title, the application need only refer to that proposal by filing date, office and case number. The applicant shall certify that there have been no changes in any of the information.

§ 2920.5–3 Application review.

Every application shall be reviewed to determine if it conforms to the notice of realty action. If the application does not meet the requirements of this subpart, the application may be denied, and the applicant shall be so advised in writing, with an explanation.

§ 2920.5–4 Competitive or non-competitive bids.

(a) *Competitive.* Land use authorizations may be offered on a competitive basis if, in the judgment of the authorized officer, a competitive interest exists or if no equities, such as prior use of the lands, warrant non-competitive land use authorization. Land use authorizations shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offered. A bid at less than fair market value shall not be considered. Each bidder shall submit information required by the notice of realty action.

(b) *Non-competitive.* Land use authorizations may be offered on a negotiated, non-competitive basis, when, in the judgement of the authorized officer equities, such as prior use of the lands, exist, no competitive interest exists or where competitive bidding would represent unfair competitive and economic disadvantage to the originator of the unique land use concept. The non-competitive bid shall not be for less than fair market value.

§ 2920.5–5 Application processing.

(a) After review of applications filed, the authorized officer shall select one application for further processing in accordance with the notice of realty action. The authorized officer shall provide public notice of the selection of an applicant and notify the selected applicant, in writing, of the selection. All other applications shall be rejected and returned to the applicants.

(b) The selected land use applicant shall submit any additional information that the authorized officer considers necessary to process the land use authorization.

§ 2920.6 Reimbursement of costs.

(a) When two or more applications are submitted for a land use authorization, each applicant shall be liable for the identifiable costs of processing his (or her) application. Where the costs of processing two or more applications cannot be readily identified with particular applications, all applicants shall be liable for such costs, to be divided equally among them.

(b) The selected land use applicant shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing a land use authorization application and in monitoring construction, operation, maintenance and rehabilitation of facilities authorized under this part, including preparation of reports and statements required by the National Environmental Policy Act of 1969 (43 U.S.C. 4321 et seq.). The reimbursement of costs shall be in accordance with the provisions of § 2803.1–1 of this title, except that any permit whose total rental is less than $250 shall be exempt from reimbursement of costs requirements.

(c) The authorized officer may, before beginning any processing of a land use authorization application, require payment, as may be needed, to cover the estimated costs of processing the application. Before granting a land use authorization, the authorized officer shall assess and collect the actual costs of processing after furnishing the applicant with a statement of costs. This payment shall be determined in accordance with the provisions of § 2803 of this title.

(d) A selected applicant who withdraws, in writing, a land use application before a final decision is reached on the authorization is responsible for all costs incurred by the United States in processing the application up to the day that the authorized officer receives notice of the withdrawal and for costs subsequently incurred by the United States in terminating the proposed land use authorization process. Reimbursement of such costs shall be paid within 30 days of receipt of notice from the authorized officer of the amount due.

(e) Advance payments based on a schedule of rates developed by the authorized officer, are required for monitoring of operations and maintenance during the term of the land use authorization, which amount shall be paid simultaneously with the rental payment required by § 2920.8(a) of this title.

(f) The selected applicant shall, before a land use authorization is issued, submit a payment based on a schedule of rates developed by the Director, Bureau of Land Management, for monitoring rehabilitation or restoration of the lands upon expiration of the land use authorization.

(g) If payment, as required by paragraphs (b), (d) and (e) of this section, exceeds actual costs to the United States, refund may be made by the authorized officer from applicable funds under authority of 43 U.S.C. 1734, or the authorized officer may adjust the next billing to reflect the overpayment. Neither an applicant nor a holder of land use authorization shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States without the prior written approval of the authorized officer.

(h) The authorized officer shall, on request, give a selected applicant an estimate, based on the best available cost information, of the costs, which may be incurred by the United States in processing the proposed land use authorization. However, reimbursement shall not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(i) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity jointly make application for a land use authorization, each such party shall be jointly and severally liable for the costs under this section.

(j) Requests for modification of or addition to the land use authorization or reconstruction or relocation of any authorized facilities shall be treated as a new application for cost recovery purposes and are subject to the cost requirements of this section.

§ 2920.7 Terms and conditions.

(a) In all land use authorizations the United States reserves the right to use the public lands or to authorize the use of the public lands by the general public in any way compatible or consistent with the authorized land use and such reservations shall be included as a part of all land use authorizations. Authorized representatives of the Department of the Interior, other Federal agencies and State and local law enforcement personnel shall at all times have the right to enter the premises on official business. Holders shall not close or otherwise obstruct the use of roads or trails commonly in public use.

(b) Each land use authorization shall contain terms and conditions which shall:

(1) Carry out the purposes of applicable law and regulations issued thereunder;

(2) Minimize damage to scenic, cultural and aesthetic values, fish and wildlife habitat and otherwise protect the environment;

(3) Require compliance with air and water quality standards established pursuant to applicable Federal or State law; and

(4) Require compliance with State standards for public health and safety, environmental protection, siting, construction, operation and maintenance of, or for, such use if those standards are more stringent than applicable Federal standards.

(c) Land use authorizations shall also contain such other terms and conditions as the authorized officer considers necessary to:

(1) Protect Federal property and economic interests;

(2) Manage efficiently the public lands which are subject to the use or adjacent to or occupied by such use;

(3) Protect lives and property;

(4) Protect the interests of individuals living in the general area of the use who rely on the fish, wildlife and other biotic resources of the area for subsistence purposes;

(5) Require the use to be located in an area which shall cause least damage to the environment, taking into consideration feasibility and other relevant factors; and

(6) Otherwise protect the public interest.

(d) A holder shall be required to secure authorization under applicable law to pay in advance the fair market value, as determined by the authorized officer, of any mineral, vegetative materials (including timber) to be cut, removed, used or destroyed on public lands.

(e) A holder shall not use the public lands for any purposes other than those specified in the land use authorization without the approval of the authorized officer.

(f) Liability provisions:

(1) Holders of a land use authorization and all owners of any interest in, and all affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay the United States the full value for all injuries or damage to public lands or other property of the United States caused by the holder or by its employees, agents or servants, or by a contractor, its employees, agents or servants, except holders shall be held to standards of strict liability where the Secretary of the Interior determines that the activities taking place on the area covered by the land use authorization present a foreseeable hazard or risk of danger to public lands or other property of the United States. Strict liability shall not be applied where such damages or injuries result from acts of war or negligence of the United States.

(2) Holders of a land use authorization and all owners of any interest in, and affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay third parties the full value of all injuries or damage to life, person or property caused by the holder, its employees, agents or servants or by a contractor, its employees, agents or servants.

(3) Holders of a land use authorization shall indemnify or hold harmless the United States against any liability for damages to life, person or property arising from the authorized occupancy or use of the public lands under the land use authorization. Where a land use authorization is issued to a State or local government or any agency or instrumentality thereof, which has no legal power to assume such liability with respect to damages caused by it to lands or property, such State or local government or agency in lieu thereof shall be required to repair all damages.

(g) The authorized officer may require a bond or other security satisfactory to him/her to insure the fulfillment of the terms and conditions of the land use authorization.

(h) Any land use authorization existing on the effective date of this regulation is not affected by this regulation and shall continue to be administered under the statutory authority under which it was issued. However, by filing a proposal for amendment or renewal, the holder of a land use authorization shall be considered to have agreed to convert the entire authorization to the current statutory authority and the regulations in effect at the time of approval of the amendment or renewal.

(i) The holder of a land use authorization who has complied with the provisions thereof, shall, upon the filing of a request for renewal, be the preferred user for a new land use authorization provided that the public lands are not needed for another use. Renewal, if granted, shall be subject to new terms and conditions. If so specified in the terms of a permit, the permit may be automatically renewable upon payment of the annual rental unless the authorized officer notifies the permittee within 60 days of the expiration date of the permit that the

permit shall not be renewed.

(j) Land use authorizations may be transferred in whole or in part but only under the following conditions:

(1) the transferee shall comply with the provisions of § 2920.2–3 of this title;

(2) the authorized officer may modify the terms and conditions of the land use authorization and the transferee shall agree, in writing, to comply with and be bound by the terms and conditions of the authorization as modified; and

(3) transfers shall not take effect until approved by the authorized officer.

(k) If public lands included in a lease or easement are to be disposed of, the conveyance shall be made subject to the lease or easement. Permits shall be revoked prior to disposal of the public lands.

§ 2920.8 Fees.

(a) *Rental.* (1) Holders of a land use authorization shall pay annually or otherwise as determined by the authorized officer, in advance, a rental as determined by the authorized officer. The rental shall be based either upon the fair market value of the rights authorized in the land use authorization or as determined by competitive bidding. In no case shall the rental be less than fair market value.

(2) Rental fees for leases and easements may be adjusted every 5 years or earlier, as determined by the authorized officer, to reflect current fair market value.

(3) The rental fees required by this section are payable when due, and a late charge of 1 percent per month of the unpaid amount or $15 per month, whichever is greater, shall be assessed if subsequent billings are required. Failure to pay the rental fee in a timely manner is cause for termination of the land use authorization.

(b) *Processing Fee.* Each request for renewal, transfer or assignment of a lease or easement shall be accompanied by a non-refundable processing fee of $25. The authorized officer may waive or reduce this fee for requests for permit renewals which can be processed with a minimal amount of work.

§ 2920.9 Supervision of the land use authorization.

§ 2920.9–1 Construction phase.

(a) Unless otherwise stated in the land use authorization, construction may proceed immediately upon receipt and acceptance of the land use authorization by the selected applicant.

(b) Where an authorization to use public lands provides that no construction shall occur until specific permission to begin construction is granted, no construction shall occur until an appropriate Notice to Proceed has been issued by the authorized officer, following the submission and approval of required plans or documents.

(c) The authorized officer shall inspect and monitor construction as necessary, to assure compliance with approved plans and protection of the resources, the environment and the public health, safety and welfare.

(d) The holder of a land use authorization may be required to designate a field representative who can accept and act on guidance and instructions from the authorized officer.

(e) The holder of a land use authorization may be required to provide proof of construction to the approved plan and required standards. Thereafter, operation of the authorized facilities may begin.

§ 2920.9–2 Operation and maintenance.

The authorized officer shall inspect and monitor the operation and maintenance of the land use authorization area, its facilities and improvements to assure compliance with the plan of management and protection of the resources, the environment and the public health, safety and welfare, and the holder of the land use authorization shall take corrective action as required by the authorized officer.

§ 2920.9–3 Termination and suspension.

(a) Land use authorizations may be terminated under the following circumstances:

(1) If a land use authorization provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon event, the land use authorization shall thereupon automatically terminate by operation of law upon the occurrence of such event.

(2) Noncompliance with applicable law, regulations or terms and conditions of the land use authorization.

(3) Failure of the holder to use the land use authorization for the purpose for which it was authorized. Failure to construct or nonuse for any continuous 2-year period shall constitute a presumption of abandonment and termination.

(4) Mutual agreement that the land use authorization should be terminated.

(5) Nonpayment of rent for 2 consecutive months, following notice of payment due.

(6) So that the public lands covered by the permit can be disposed of or used for any other purpose.

(b)(1) Upon determination that there is noncompliance with the terms and conditions of a land use authorization which adversely affects the public health, safety or welfare or the environment, the authorized officer shall issue an immediate temporary suspension.

(2) The authorized officer may give an immediate temporary susension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent. The authorized officer may also take such action considered necessary to require correction of such defects prior to an administrative proceeding.

(3) The authorized officer may order immediate temporary suspension of an activity regardless of any action that has been or is being taken by another Federal agency or a State agency.

(4) An order of temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(5) Any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(6) The authorized officer may render an order to either grant or deny the request to resume within 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, the holder shall have the same right to appeal the denial as if an order denying the request had been issued.

(c) Process for termination or suspension other than temporary immediate suspension.

(1) Prior to commencing any proceeding to suspend or terminate a land use authorization, the authorized

officer shall give written notice to the holder of the legal grounds for such action and shall give the holder a reasonable time to correct any noncompliance.

(2) After due notice of termination or suspension to the holder of a land use authorization, if noncompliance still exists after a reasonable time, the authorized officer shall give written notice to the holder and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR 4.420–4.439. The authorized officer shall suspend or revoke the land use authorization if the Administrative Law Judge determines that grounds for suspension or revocation exists and that such action is justified.

(3) The authorized officer shall terminate a suspension order when the authorized officer determines that the violation causing such suspension has been rectified.

(d) Upon termination, revocation or cancellation of a land use authorization, the holder shall remove all structures and improvements except those owned by the United States within 60 days of the notice of termination, revocation or cancellation and shall restore the site to its pre-use condition, unless otherwise agreed upon in writing or in the land use authorization. If the holder fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that shall not relieve the holder of liability for the cost of their removal and restoration of the site.

Guy R. Martin,
Assistant Secretary of the Interior.
January 14, 1981.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2484]

43 CFR PARTS 2090, 2300, 2310, 2320, 2340 and 2350

Federal Land Withdrawals; Amendment to Withdrawal Procedures

Under the authority of section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714), the Federal Power Act of 1920 (16 U.S.C. 818), the Act of February 28, 1958 (43 U.S.C. 155 et seq.), section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487), and Executive Order 10355 (17 FR 4831), Group 2300, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is revised as set forth below.

1. Part 2300 is revised as follows:

PART 2300—LAND WITHDRAWALS

Subpart 2300—Withdrawals, General

Sec.

2300.0–1 Purpose.
2300.0–3 Authority.
2300.0–5 Definitions.

Subpart 2310—Withdrawals, General—Procedure

2310.1 Procedures—general.
2310.1–1 Preapplication consultation.
2310.1–2 Submission of applications.
2310.1–3 Submission of withdrawal petitions.
2310.1–4 Cancellation of withdrawal applications or withdrawal proposals and denial of applications.
2310.2 Segregative effect of withdrawal applications or withdrawal proposals.
2310.2–1 Termination of segregative effect of withdrawal applications or withdrawal proposals.
2310.3 Action on withdrawal applications and withdrawal proposals, except for emergency withdrawals.
2310.3–1 Publication and public meeting requirements.
2310.3–2 Development and processing of the case file for submission to the Secretary.
2310.3–3 Action by the Secretary—public land orders and notices of denial.
2310.3–4 Duration of withdrawals.
2310.3–5 Compensation for improvements.
2310.3–6 Transfer of jurisdiction.
2310.4 Review and extension of withdrawals.
2310.5 Special action on emergency withdrawals.

Subpart 2320—Federal Energy Regulatory Commission Withdrawals

2320.0–3 Authority.
2320.1 Lands considered withdrawn or classified for power purposes.
2320.2 General determinations under the Federal Power Act.

Authority: 43 U.S.C. 1201; 43 U.S.C. 1740; Executive Order No. 10355 (17 FR 4831, 4833).

Group 2300—Withdrawals

PART 2300—WITHDRAWALS

Subpart 2300—Withdrawals, General

§ 2300.0–1 Purpose.

(a) These regulations set forth procedures implementing the Secretary of the Interior's authority to process Federal land withdrawal applications and, where appropriate, to make, modify or extend Federal land withdrawals. Procedures for making emergency withdrawals are also included.

(b) The regulations do not apply to withdrawals that are made by the Secretary of the Interior pursuant to an act of Congress which directs the issuance of an order by the Secretary. Likewise, procedures applicable to withdrawals authorized under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b); 1281), and procedures relating to the Secretary's authority to establish Indian reservations or to add lands to the reservations pursuant to special legislation or in accordance with section 7 of the Act of June 18, 1934 (25 U.S.C. 467), as supplemented by section 1 of the Act of May 1, 1936 (25 U.S.C. 473a), are not included in these regulations.

(c) General procedures relating to the processing of revocation of withdrawals and relating to the relinquishment of reserved Federal land areas are not included in this Part.

§ 2300.0–3 Authority.

(a)(1) Section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) gives the Secretary of the Interior general authority to make, modify, extend or revoke withdrawals, but only in accordance with the provisions and limitations of that section. Among other limitations, the Federal Land Policy and Management Act of 1976 provides that the Secretary of the Interior does not have authority to:

(i) Make, modify or revoke any withdrawal created by an Act of Congress;

(ii) Make a withdrawal which can be made only by an Act of Congress;

(iii) Modify or revoke any withdrawal creating national monuments under the Act of June 8, 1906 (16 U.S.C. 431–433), sometimes referred to as the Antiquities Act;

(iv) Modify or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to October 21, 1976, the date of approval of the Federal Land Policy and Management Act of 1976 or which thereafter adds lands to that System under the terms of that Act. In this connection, nothing in the Federal Land Policy and Management Act of 1976 is intended to modify or change any provision of the Act of February 27, 1976 (16 U.S.C. 668 dd(a)).

(2) Executive Order 10355 of May 26, 1952 (17 FR 4831), confers on the Secretary of the Interior all of the delegable authority of the President to make, modify and revoke withdrawals and reservations with respect to lands of the public domain and other lands owned and controlled by the United States in the continental United States or Alaska.

(3) The Act of February 28, 1958 (43 U.S.C. 155–158), sometimes referred to as the Engle Act, places on the Secretary of the Interior the responsibility to process Department of Defense applications for national defense withdrawals, reservations or restrictions aggregating 5,000 acres or more for any one project or facility. These withdrawals, reservations or restrictions may only be made by an act of Congress, except in time of war or national emergency declared by the President or the Congress and except as otherwise expressly provided in the Act of February 28, 1958.

(4) Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) authorizes the Secretary of the Interior to regulate the management of the public lands as defined in the Act through instruments, such as memorandum of understanding, which the Secretary deems appropriate.

(5) Section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487), authorizes the President and the Secretary to make withdrawals exceeding 5,000 acres, in the aggregate, in the State of Alaska subject to the provisions that such withdrawals shall not become effective until notice is provided in the Federal Register and to both Houses of the Congress and such withdrawals shall terminate unless Congress passes a Joint Resolution of approval within one yea

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after the notice of withdrawal has been submitted to the Congress.

(b) The following references do not afford either withdrawal application processing or withdrawal authority but are provided as background information.

(1) Executive Order 6910 of November 26, 1934, and Executive Order 6964 of February 5, 1935, as modified, withdrew sizable portions of the public lands for classification and conservation. These lands and the grazing districts estalished under the Taylor Grazing Act of 1934, as amended, are subject to the classification and opening procedures of section 7 of the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315f); however, they are not closed to the operation of the mining or mineral leasing laws unless separately withdrawn or reserved, classified for retention from disposal, or precluded from mineral leasing or mining location under other authority.

(2) The Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–1418), authorized the Secretary of the Interior to classify, in appropriate cases, public lands and other Federal lands exclusively administered by the Secretary of the Interior through the Bureau of Land Management for retention or disposal under Federal ownership and management. Numerous classification decisions based upon this statutory authority were made by the Secretary of the Interior. For the effect of these classification with regard to the disposal and leasing laws of the United States, see Subparts 2440 and 2461 of this title.

(3) Section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) provides for land use planning and resultant management decisions which may operate to totally eliminate a particular land use, including one or more "principal or major uses," as defined in the Act. Withdrawals made pursuant to section 204 of the Federal Land Policy and Management Act of 1976 may be used in appropriate cases, to carry out management decisions, except that "public lands," as defined in the Act, can be removed from or restored to the operation of the Mining Law of 1872, as amended, or transferred to another department, agency or office, only by withdrawal action pursuant to section 204 of the Federal Land Policy and Management Act of 1976 or other action pursuant to applicable law.

(4) The first proviso of section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) provides, in part, that unless otherwise provided for by law, the Secretary of the Interior may permit Federal departments and agencies to use, occupy and develop public lands *only* through rights-of-way under section 507 of the Act (43 U.S.C. 1767); withdrawals under section 204 of the Act (43 U.S.C. 1714); and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under section 307(b) of the Act (43 U.S.C. 1737(b)).

(5) Section 701(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 note) provides that all withdrawals, reservations, classifications and designations in effect on October 21, 1976, the effective date of the Act, shall remain in full force and effect until modified under the provisions of the Act or other applicable law.

§ 2300.0–5 Definitions.

As used in this part, the term:

(a) "Secretary" means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President by and with the advice and consent of the Senate and to whom has been delegated the authority of the Secretary to perform the duties described in this part to be performed by the "Secretary."

(b) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part to be performed by the "authorized officer."

(c) "Act" means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), unless otherwise specified.

(d) "Lands" includes both upland and submerged land areas and any right or interest in such areas. To the extent provided in section 1 of the Act of February 28, 1958 (43 U.S.C. 155), the term also includes offshore waters.

(e) "Cultural resources" means those fragile and nonrenewable physical remains of human activity found in districts, sites, structures, burial mounds, petroglyphs, artifacts, objects, ruins, works of art, architecture or natural settings or features which were important to prehistoric, historic or other land and resource use events.

(f) "Archeological areas/resources" means sites or areas containing important evidence or the physical remains of former but now extinct cultural groups, their skeletons, settlements, implements, artifacts, monuments and inscriptions.

(g) "Resource use" means a land use having as its primary objective the preservation, conservation, enhancement or development of:

(1) Any renewable or nonrenewable natural resource indigenous to a particular land area, including, but not limited to, mineral, timber, forage, water, fish or wildlife resources, or

(2) Any resource value associated with a particular land area, including, but not limited to, watershed, power, scenic, wilderness, clean air or recreational values. The term does not include military or other governmental activities requiring land sites only as an incidental means to achieving an end not related primarily to the preservation, conservation, enhancement or development of natural resources or resource values indigenous to or associated with a particular land area.

(h) "Withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry under some or all of the general land laws, for the purpose of limiting activites under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act (40 U.S.C. 472), from one department, bureau or agency to another department, bureau or agency.

(i) "Department" means a unit of the Executive branch of the Federal Government which is headed by a member of the President's Cabinet.

(j) "Agency" means a unit of the Executive branch of the Federal Government which is not within a Department.

(k) "Office" means an office or bureau of the Department of the Interior.

(l) "Applicant" means any Federal department, agency or office.

(m) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of regulatory authority to allow for the orderly administration of the public lands.

(n) "Legal description" means a written land description based upon either an approved and filed Federal land survey executed as a part of the United States Public Land Survey System or, where specifically authorized under Federal law, upon a protraction diagram. In the absence of the foregoing, the term means a written description, approved by the authorized officer, which defines the exterior boundaries of a tract of land by reference to a metes and bounds survey or natural or other monuments.

(o) "Modify" or "modification" does not include, for the purposes of section 204 of the act (43 U.S.C. 1714), the addition of lands to an existing withdrawal or the partial revocation of a withdrawal.

(p) "Withdrawal petition" means a request, originated within the Department of the Interior and submitted to the Secretary, to file an application for withdrawal.

(q) "Withdrawal proposal" means a withdrawal petition approved by the Secretary.

Subpart 2310—Withdrawals, General—Procedure

§ 2310.1 Procedures—general.

(a) The basic steps leading up to the making, modification or extension of a withdrawal, except emergency withdrawals, are:

(1) Preapplication consultation;

(2) Obtaining Secretarial approval of a withdrawal petition in appropriate cases;

(3) Submission for filing of an application for a requested withdrawal action;

(4) Publication in the Federal Register of a notice stating that a withdrawal proposal has been made or that an application has been submitted for filing.

(5) Negotiations between the applicant and the authorized officer as well as the accomplishment of investigations, studies and analyses which may be required to process an application.

(6) Preparation of the case file to be considered by the Secretary, including the authorized officer's findings and recommendations;

(7) Transmittal of the case file to the Director, Bureau of Land Management, for the Director's review and decision regarding the findings and recommendations of the authorized officer;

(8) Transmittal of the case file to the Secretary.

(9) Publication of a public land order or a notice of denial signed by the Secretary. If the application seeks a national defense withdrawal that may only be made by an act of Congress, the Secretary will transmit to the Congress proposed legislation along with the Secretary's recommendations, and documentation relating thereto.

§ 2310.1-1 Preapplication consultation.

A potential applicant should contact the appropriate State office of the Bureau of Land Management well in advance of the anticipated submission date of an application. Early consultation can familiarize the potential applicant with the responsibilities of an applicant, the authorized officer and the Secretary. Early consultation also will assist in determining the need for a withdrawal, taking possible alternatives into account, increase the likelihood that the applicant's needs will be considered in ongoing land use planning, assist in determining the extent to which any public lands that may be involved would have to be segregated if an application is submitted; and result in preliminary determinations regarding the scheduling of various investigations, studies, analyses, public meetings and negotiations that may be required for a withdrawal. Studies and analyses should be programmed to ensure their completion in sufficient time to allow the Secretary or the Congress adequate time to act on the application before the expiration of the segregation period.

§ 2310.1-2 Submission of applications.

(a) Applications for the making, modification or extension of a withdrawal shall be submitted for filing, in duplicate, in the proper Bureau of Land Management office, as set forth in § 1821.2-1 of this title, except for emergency withdrawal requests and applications that are classified for national security reasons. Requests for emergency withdrawals and applications that are classified for national security reasons shall be submitted, in duplicate, in the Office of the Secretary, Department of the Interior, Washington, D.C. 20240.

(b) Before the authorized officer can take action on a withdrawal proposal, a withdrawal application in support thereof shall be submitted. The application may be submitted simultaneously with the making of a withdrawal proposal, in which case only the notice required by § 2310.3-1(a) of this title, referencing both the application and the withdrawal proposal, shall be published.

(c) No specific form is required, but, except as otherwise provided in § 2310.3-6(b) of this title, the application shall contain at least the following information:

(1) The name and address of the applicant. Where the organization intending to use the lands is different from the applicant, the name and address of such using agency shall also be included.

(2) If the applicant is a department or agency other than the Department of the Interior or an office thereof, a statement of the delegation or delegations of authority of the official acting on behalf of the department or agency submitting the application, substantiating that the official is empowered to act on behalf of the head of the department or agency in connection with all matters pertaining to the application.

(3) If the lands which are subject to an application are wholly or partially under the administration of any department or agency other than the Department of the Interior, the Secretary shall make or modify a withdrawal only with the consent of the head of the department or agency concerned, except in the case of an emergency withdrawal. In such case, a copy of the written consent shall accompany the application. The requirements of section (e) of Executive Order 10355 (17 FR 4831), shall be complied with in those instances where the Order applies.

(4) The type of withdrawal action that is being requested (See § 2300.0-5(h) of this title) and whether the application pertains to the making, extension or modification of a withdrawal.

(5) A description of the lands involved in the application, which shall consist of the following:

(i) A legal description of the entire land area that falls within the exterior boundaries of the affected area and the total acreage of such lands;

(ii) A legal description of the lands, Federal or otherwise, within the exterior boundaries that are to be excepted from the requested action, and after deducting the total acreage of all the excepted lands, the net remaining acreage of all Federal lands (as well as all non-Federal lands which, if they should be returned to or should pass to Federal ownership, would become subject to the withdrawal) within exterior boundaries of the affected land areas;

(iii) In the case of a national defense withdrawal which can only be made by an act of Congress, sections 3(2) and 3(3) of the Act of February 28, 1958 (43 U.S.C. 157 (2), (3)) shall be complied with in lieu of subparagraphs (5) (i) and (ii) of this paragraph.

(6) If the application is for a withdrawal that would overlap, or that would add lands to one or more existing withdrawals, the application shall also contain:

(i) An identification of each of the existing withdrawals, including the project name, if any, the date of the withdrawal order, the number and type of order, if known, or, in lieu of the foregoing, a copy of the order;

(ii) As to each existing withdrawal that would be overlapped by the requested withdrawal, the total area and a legal description of the area that would be overlapped; and

(iii) The total acreage, Federal or otherwise, that would be added to the existing withdrawal, if the new application is allowed.

(7) The public purpose or statutory program for which the lands would be withdrawn. If the purpose or program for which the lands would be withdrawn is classified for national security reasons, a statement to that effect shall be included; but, if at all possible, a general description of the use to which the lands would be devoted, if the requested withdrawal is allowed, should be included. In the case of applications that are not classified for national security reasons, an analysis of the manner in which the lands as well as their natural resources and resource values would be used to implement the purpose or program shall be provided.

(8) The extent to which the lands embraced in the application are requested to be withheld from settlement, sale, location or entry under the public land laws, including the mining laws, together with the extent to which, and the time during which, the lands involved in the application would be temporarily segregated in accordance with § 2310.2 of this title.

(9) The type of temporary land use that, at the discretion of the authorized officer, may be permitted or allowed

during the segregation period, in accordance with § 2310.2 of this title.

(10) An analysis and explanation of why neither a right-of-way under section 507 of the act (43 U.S.C. 1767), nor a cooperative agreement under sections 302(b) (43 U.S.C. 1732(b)) and 307(b) (43 U.S.C. 1737(b)) of the act would adequately provide for the proposed use.

(11) The duration of the withdrawal, with a statement in justification thereof (see § 2310.3–4 of this title). Where an extension of an existing withdrawal is requested, its duration may not exceed the duration of the existing withdrawal.

(12) A statement as to whether any suitable alternative sites are available for the proposed use or for uses which the requested withdrawal action would displace. The statement shall include a study comparing the projected costs of obtaining each alternative site in suitable condition for the intended use, as well as the projected costs of obtaining and developing each alternative site for uses that the requested withdrawal action would displace.

(13) A statement as to whether water will or will not be needed to fulfill the purpose of the requested withdrawal action.

(14) The place where records relating to the application can be examined by interested persons.

(d) Except in the case of an emergency withdrawal, if the preceding application requirements have not been met, or if an application seeks an action that is not within the scope of the Secretary's authority, the application may be rejected by the authorized officer as a defective application.

§ 2310.1–3 Submission of withdrawal petitions.

(a) Withdrawal petitions shall be submitted to the Director, Bureau of Land Management, for transmittal to the Secretary.

(b) No specific form is required, but the petition shall contain at least the following information:

(1) The office originating the petition;

(2) The type and purpose of the proposed withdrawal action (See § 2300.0–5(h) of this title) and whether the petition pertains to the making, extension or modification of a withdrawal;

(3) A legal description of the entire land area that falls within the exterior boundaries affected by the petition, together with the total acreage of such lands, and a map of the area;

(4) The extent to which and the time during which any public lands that may be involved in the petition would be temporarily segregated and the temporary land uses that may be permitted during the segregation period, in accordance with § 2310.2 of this title; and

(5) A preliminary identification of the mineral resources in the area.

(c) Except in the case of petitions seeking emergency withdrawals, if a petition is submitted simultaneously with a withdrawal application, the information requirements pertaining to withdrawal applications (See § 2310.1–2 of this title), shall supersede the requirements of this section.

(d) If a petition seeks an emergency withdrawal under the provisions of section 204(e) of the act, the petition shall be filed simultaneously with an application for withdrawal. In such instances, the petition/application shall provide as much of the information required by §§ 2310.1–2(c) and 2310.3–2(b) of this title as is available to the petitioner when the petition is submitted.

(e) Upon the approval by the Secretary of a petition for withdrawal, the petition shall be considered as a Secretarial proposal for withdrawal, and notice of the withdrawal proposal shall be published immediately in the Federal Register in accordance with § 2310.3–1(a) of this title. If a petition which seeks an emergency withdrawal is approved by the Secretary, the publication and notice provisions pertaining to emergency withdrawals shall be applicable. (See § 2310.5 of this title.)

§ 2310.1–4 Cancellation of withdrawal applications or withdrawal proposals and denial of applications.

(a) Withdrawal or extension applications and proposals shall be amended promptly to cancel the application or proposal, in whole or in part, with respect to any lands which the applicant, in the case of applications, or the office, in the case of proposals, determines are no longer needed in connection with a requested or proposed action. The filing of a cancellation notice in each such case shall result in the termination of the segregation of the public lands that are to be eliminated from the withdrawal application or withdrawal proposal. (See § 2310.2–1 of this title)

(b) The Secretary may deny an application if the costs (as defined in section 304(b) of the act (43 U.S.C. 1734(b)) estimated to be incurred by the Department of the Interior would, in the judgment of the Secretary, be excessive in relation to available funds appropriated for processing applications requesting a discretionary withdrawal, or a modification or extension of a withdrawal.

§ 2310.2 Segregative effect of withdrawal applications or withdrawal proposals.

The following provisions apply only to applications or proposals to withdraw lands and not to applications or proposals seeking to modify or extend withdrawals.

(a) *Withdrawal applications or withdrawal proposals submitted on or after October 21, 1976.*—Within 30 days of the submission for filing of a withdrawal application, or whenever a withdrawal proposal is made, a notice stating that the application has been submitted or that the proposal has been made, shall be published in the Federal Register by the authorized officer. Publication of the notice in the Federal Register shall segregate the lands described in the application or proposal from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the notice, for 2 years from the date of publication of the notice unless the segregative effect is terminated sooner in accordance with the provisions of this Part. The notices published pursuant to the provisions of this section shall be the same notices required by § 2310.3–1 of this title. Publication of a notice of a withdrawal application that is based on a prior withdrawal proposal, notice of which was published in the Federal Register, shall not operate to extend the segregation period which commenced upon the publication of the prior withdrawal proposal.

(b) *Withdrawal applications submitted before October 21, 1976.*—The public lands described in a withdrawal application filed before October 21, 1976, shall remain segregated through October 20, 1991, from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the Federal Register notice or notices that pertain to the application, unless the segregative effect of the application is terminated sooner in accordance with other provisions of this Part. Any amendment made on or after October 21, 1976, of a withdrawal application submitted before October 21, 1976, for the purpose of adding Federal lands to the lands described in a previous application, shall require the publication in the Federal Register, within 30 days of receipt of the amended application, of a notice of the amendment of the withdrawal application. All of the lands described in the amended application which includes those lands described in the original application shall be segregated for 2 years from the date of publication of the notice of the amended application in the Federal Register.

(c) Applications for licenses, permits, cooperative agreements or other discretionary land use authorizations of a temporary nature that are filed on or after October 21, 1976, regarding lands involved in a withdrawal application or a withdrawal proposal and that are listed in the notices required by § 2310.3–2 of this title as permissible during the segregation period, may be approved by the authorized officer while the lands remain segregated.

(d) Except as provided in paragraph (c) of this section, applications for the use of lands involved in a withdrawal application or a withdrawal proposal, the allowance of which is discretionary, shall be denied.

(e) The temporary segregation of lands in connection with a withdrawal application or a withdrawal proposal shall not affect in any respect Federal agency administrative jurisdiction of the lands, and the segregation shall not have the effect of authorizing or permitting any use of the lands by the applicant or using agency.

§ 2310.2-1 Termination of the segregative effect of withdrawal applications or withdrawal proposals.

(a) The publication in the Federal Register of an order allowing a withdrawal application, in whole or in part, shall terminate the segregative effect of the application as to those lands withdrawn by the order.

(b) The denial of a withdrawal application, in whole or in part, shall result in the termination of the segregative effect of the application or proposal as to those lands where the withdrawal is disallowed. Within 30 days following the decision to disallow the application or proposal, in whole or in part, the authorized officer shall publish a notice in the Federal Register specifying the reasons for the denial and the date that the segregative period terminated. The termination date of the segregation period shall be noted promptly on the public land status records on or before the termination date.

(c) The cancellation, in whole or in part, of a withdrawal application or a withdrawal proposal shall result in the termination of the segregative effect of the application or proposal, as to those lands deleted from the application or proposal. The authorized officer shall publish a notice in the Federal Register, within 30 days following the date of receipt of the cancellation, specifying the date that the segregation terminated. The termination date of the segregation shall be noted promptly on the public land status records. If the cancellation applies to only a portion of the public lands that are described in the withdrawal application or withdrawal proposal, then the lands that are not affected by the cancellation shall remain segregated.

(d) The segregative effect resulting from the publication on or after October 21, 1976, of a Federal Register notice of the submission of a withdrawal application or the making of a withdrawal proposal shall terminate 2 years after the publication date of the Federal Register notice unless the segregation is terminated sooner by other provisions of this section. A notice specifying the date and time of termination shall be published in the Federal Register by the authorized officer 30 days in advance of the termination date. The public land status records shall be noted as to the termination date of the segregation period on or before the termination date.

Such a termination shall not affect the processing of the withdrawal application.

(e) The segregative effect resulting from the submission of a withdrawal application or withdrawal proposal before October 21, 1976, shall terminate on October 20, 1991, unless the segregation is terminated sooner by other provisions of this part. A notice specifying the date and time of termination shall be published in the Federal Register by the authorized officer 30 days in advance of October 20, 1991. The public land status records shall be noted as to the termination date of the segregation period on or before October 20, 1991.

§ 2310.3 Action on withdrawal applications and withdrawal proposals, except for emergency withdrawals.

§ 2310.3-1 Publication and public meeting requirements.

(a) When a withdrawal proposal is made, a notice to that effect shall be published immediately in the Federal Register. The notice shall contain the information required by § 2310.1-3 of this title. In the event a withdrawal petition, which subsequently becomes a withdrawal proposal, is submitted simultaneously with a withdrawal application, the information requirements for notices pertaining to withdrawal applications (See paragraph (b) of this section) shall supersede the information requirements of this paragraph. However, in such instances, the notice required by paragraph (b) of this section shall be published immediately without regard to the 30-day period allowed for the filing for publication in the Federal Register of withdrawal application notices.

(b)(1) Except for emergency withdrawals and except as otherwise provided in paragraph (a) of this section, within 30 days of the submission for filing of a withdrawal, extension or modification application, the authorized officer shall publish in the Federal Register a notice to that effect. The authorized officer also shall publish the same notice in at least one newspaper having a general circulation in the vicinity of the lands involved and, with the cooperation and assistance of the applicant, when appropriate, shall provide sufficient publicity to inform the interested public of the requested action.

(2) The notice shall contain, in summary form, the information required by § 2310.1-2 of this title, except that the authorized officer may exclude the information required by § 2310.1-2(c)(2) of this title, and as much of the descriptive information required by §§ 2310.1-2(c) (5) and (6) of this title as the authorized officer considers appropriate. The notice shall:

(i) Provide a legal description of the lands affected by the application, together with the total acreage of such lands;

(ii) Specify the extent to which and the time during which any lands that may be involved may be segregated in accordance with § 2310.2 of this title;

(iii) Identify the temporary land uses that may be permitted or allowed during the segregation period as provided for in § 2310.2(c) of this title;

(iv) Provide for a suitable period of at least 90 days after publication of the notice, for public comment on the requested action;

(v) Solicit written comments from the public as to the requested action and provide for one or more public meetings in relation to requested actions involving 5,000 or more acres in the aggregate and, as to requested actions involving less than 5,000 acres, solicit and evaluate the written comments of the public as to the requested action and as to the need for public meetings;

(vi) State, in the case of a national defense withdrawal which can only be made by an act of Congress, that if the withdrawal is to be made, it will be made by an act of Congress;

(vii) Provide the address of the Bureau of Land Management office in which the application and the case file pertaining to it are available for public inspection and to which the written comments of the public should be sent;

(viii) State that the application will be processed in accordance with the regulations set forth in Part 2300 of this title;

(ix) Reference, if appropriate, the Federal Register in which the notice of a withdrawal proposal, if any, pertaining to the application was published previously;

(x) Provide such additional information as the authorized officer deems necessary or appropriate.

(c)(1) In determining whether a public meeting will be held on applications involving less than 5,000 acres of land, the authorized officer shall consider whether or not:

(i) A large number of persons have expressed objections to or suggestions regarding the requested action;

(ii) The objections or suggestions expressed appear to have merit without regard to the number of persons responding;

(iii) A public meeting can effectively develop information which would otherwise be difficult or costly to accumulate;

(iv) The requested action, because of the amount of acreage involved, the location of the affected lands or other relevant factors, would have an important effect on the public, as for example, the national or regional economy;

(v) There is an appreciable public interest in the lands or their use, as indicated by the records of the Bureau of Land Management;

(vi) There is prevailing public opinion in the area that favors public meetings or shows particular concern over withdrawal actions; and

(vii) The applicant has requested a public meeting.

(2) A public meeting, whether required or determined by the authorized officer to be necessary, shall be held at a time and place convenient to the interested public, the applicant and the authorized officer. A notice stating the time and place of the meeting, shall be published in the Federal Register and in at least one newspaper having a general circulation in the vicinity of lands involved in the requested action, at least 30 days before the scheduled date of the meeting.

§ 2310.3–2 Development and processing of the case file for submission to the Secretary.

(a) Except as otherwise provided in § 2310.3–6(b) of this title, the information, studies, analyses and reports identified in this paragraph that are required by applicable statutes, or which the authorized officer determines to be required for the Secretary or the Congress to make a decision or recommendation on a requested withdrawal, shall be provided by the applicant. The authorized officer shall assist the applicant to the extent the authorized officer considers it necessary or appropriate to do so. The qualifications of all specialists utilized by either the authorized officer or the applicant to prepare the information, studies, analyses and reports shall be provided.

(b) The information, studies, analyses and reports which, as appropriate, shall be provided by the applicant shall include:

(1) A report identifying the present users of the lands involved, explaining how the users will be affected by the proposed use and analyzing the manner in which existing and potential resource uses are incompatible with or conflict with the proposed use of the lands and resources that would be affected by the requested action. The report shall also specify the provisions that are to be made for, and an economic analysis of, the continuation, alteration or terminaton of existing uses. If the provisions of § 2310.3–5 of this title are applicable to the proposed withdrawal, the applicant shall also furnish a certification that the requirements of that section shall be satisfied promptly if the withdrawal is allowed or authorized.

(2) If the application states that the use of water in any State will be necessary to fulfill the purposes of the requested withdrawal, extension or modification, a report specifying that the applicant or using agency has acquired, or proposes to acquire, rights to the use of the water in conformity with applicable State laws and procedures relating to the control, appropriation, use and distribution of water, or whether the withdrawal is intended to reserve, pursuant to Federal law, sufficient unappropriated water to fulfill the purposes of the withdrawal. Water shall be reserved pursuant to Federal law for use in carrying out the purposes of the withdrawal only if specifically so stated in the relevant withdrawal order, as provided in § 2310.3–3(b) of this title and only to the extent needed for the purpose or purposes of the withdrawal as expressed in the withdrawal order. The applicant shall also provide proof of notification of the involved State's department of water resources when a land use needed to carry out the purposes of the requested withdrawal will involve utilization of the water resources in a State. As a condition to the allowance of an order reserving water, the applicant shall certify to the Secretary that it shall quantify the amount of water to be reserved by the order.

(3) An environmental assessment, an environmental impact statement or any other documents as are needed to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), and the regulations applicable thereto. The authorized officer shall participate in the development of environmental assessments or impact statements. The applicant shall designate the Bureau of Land Management as a cooperating agency and shall comply with the requirements of the regulations of the Council on Environmental Quality. The Bureau of Land Management shall, at a minimum, independently evaluate and review the final product. The following items shall either be included in the assessment or impact statement, or they may be submitted separately, with appropriate cross references.

(i) A report on the identification of cultural resources prepared in accordance with the requirements of 36 CFR Part 800, and other applicable regulations.

(ii) An identification of the roadless areas or roadless islands having wilderness characteristics, as described in the Wilderness Act of 1964 (16 U.S.C. 1131, et seq.), which exist within the area covered by the requested withdrawal action.

(iii) A mineral resource analysis prepared by a qualified mining engineer, engineering geologist or geologist which shall include, but shall not be limited to, information on: General geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential and present and potential market demands.

(iv) A biological assessment of any listed or proposed endangered or threatened species, and their critical habitat, which may occur on or in the vicinity of the involved lands, prepared in accordance with the provisions of section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536), and regulations applicable thereto, if the Secretary determines that assessment is required by law.

(v) An analysis of the economic impact of the proposed uses and changes in use associated with the requested action on individuals, local communities, State and local government interests, the regional economy and the Nation as a whole.

(vi) A statement as to the extent and manner in which the public participated in the environmental review process.

(4) A statement with specific supporting data, as to:

(i) Whether the lands involved are floodplains or are considered wetlands; and

(ii) Whether the existing and proposed uses would affect or be affected by such floodplains or wetlands and, if so, to what degree and in what manner. The statement shall indicate whether, if the requested action is allowed, it will comply with the provisions of Executive Orders 11988 and 11990 of May 24, 1977 (42 FR 26951; 26961).

(5) A statement of the consultation which has been or will be conducted with other Federal departments or agencies; with regional, State and local Government bodies; and with individuals and nongovernmental groups regarding the requested action.

(c) Prior to final action being taken in connection with an application, the applicant shall prepare, with the guidance and participation of the authorized officer, and subject to the approval of the authorized officer, the Secretary and other affected departments, agencies or offices, a

resource management plan and implementation program regarding the use and management of any public lands with their related resources uses. Consideration shall be given to the impact of the proposed reservation on access to and the use of the land areas that are located in the vicinity of the lands proposed to be withdrawn. Where appropriate, the plan and program will be implemented by means of a memorandum of understanding between the affected agencies. Any allocation of jurisdiction between the agencies shall be effected in the public land order or legislation. In those cases where the Secretary, acting through the Bureau of Land Management, would continue to exercise partial jurisdiction, resource management of withdrawn areas may be governed by the issuance of management decisions by the Bureau of Land Management to implement land use plans developed or revised under the land use planning requirements of section 202 of the act (43 U.S.C. 1712).

(d) In regard to national defense withdrawals that can only be made by an act of Congress, and to the extent that they are not otherwise satisfied by the information, studies, analyses and reports provided in accordance with the provisions of this section, the provisions of section 3(7) of the Act of February 28, 1958 (43 U.S.C. 157(7)), shall be complied with.

(e) The authorized officer shall develop preliminary findings and recommendations to be submitted to the Secretary, advise the applicant of the findings and recommendations, and provide the applicant an opportunity to discuss any objections thereto which the applicant may have.

(f) Following the discussion process, or in the absence thereof, the authorized officer shall prepare the findings, keyed specifically to the relevant portions of the case file, and the recommendations to the Secretary in connection with the application. The authorized officer also shall prepare, for consideration by the Secretary, a proposed order or notice of denial. In the case of a national defense withdrawal which can only be made by an act of Congress, the authorized officer shall prepare, with the cooperation of the applicant, a draft legislative proposal to implement the applicant's withdrawal request, together with proposed recommendations for submission by the Secretary to the Congress. The findings and recommendations of the authorized officer, and the other documents previously specified in this section to be prepared by the authorized officer shall be made a part of the case file. The case file shall then be sent to the Director, Bureau of Land Management. At the same time, a copy of the findings and recommendations of the authorized officer shall be sent to the applicant.

(1) If the applicant objects to the authorized officer's findings and recommendations to the Secretary, the applicant may, within 30 days of the receipt by the applicant of notification thereof, state its objections in writing and request the Director to review the authorized officer's findings and recommendations. The applicant shall be advised of the Director's decision within 30 days of receipt of the applicant's statement of objections in the Bureau of Land Management's Washington office. The applicant's statement of objections and the Director's decision shall be made a part of the case file and thereafter the case file shall be submitted to the Secretary.

(2) If the applicant disagrees with the decision of the Director, Bureau of Land Management, the applicant may, within 30 days of receipt by the applicant of the Director's decision, submit to the Secretary a statement of reasons for disagreement. The statement shall be considered by the Secretary together with the findings and recommendations of the authorized officer, the applicant's statement of objections, the decision of the Director, the balance of the case file and such additional information as the Secretary may request.

§ 2310.3–3 Action by the Secretary—public land orders and notices of denial.

(a) Except for national defense withdrawals which can only be made by an act of Congress, and except as may be otherwise provided in section 1(d) of Executive Order 10355 (17 FR 4833), for applications that are subject to that order, the allowance or denial, in whole or in part, of a withdrawal, modification or extension application, may only be made by the Secretary.

(b)(1) Before the allowance of an application, in whole or in part, the Secretary shall first approve all applicable memoranda of understanding and the applicant shall make all certifications required in this part. When an application has been finally allowed, in whole or in part, by the Secretary, an order to that effect shall be published promptly in the **Federal Register.** Each order shall be designated as, and shall be signed by the Secretary and issued in the form of, a "public land order." Water shall be reserved pursuant to Federal law for use in carrying out the purposes of the withdrawal only if specifically so stated in the relevant public land order. In appropriate cases, the public land order also shall refer to the memorandum of understanding discussed in § 2310.3–2(c) of this title and shall be drawn to comply with § 2310.3–6 of this title.

(2) On the same day an order withdrawing 5,000 or more acres in the aggregate is signed, the Secretary shall advise, in writing, each House of the Congress, or in the case of an emergency withdrawal, the appropriate Committee of each House, of the withdrawal action taken. Pursuant to the Secretary's authority under the act, the notices that are sent to the Congress shall be accompanied by the information required by section 204(c)(2) of the act (43 U.S.C. 1714(c)(2)), except in the case of an emergency withdrawal, transmittal of the required information may be delayed as provided in § 2310.5(c) of this title.

(c) When the action sought in an application involves the exercise by the Secretary of authority delegated by Executive Order 10355 (17 FR 4831) and the Secretary denies the application in whole or in part, the applicant shall be notified of the reasons for the Secretary's decision. The decision shall be subject to further consideration only if the applicant informs the Secretary, in writing, within 15 days of the receipt by the applicant of the Secretary's decision, that the applicant has submitted the matter to the Office of Management and Budget for consideration and adjustment, as provided for in section 1(d) of the Executive Order.

(d) A withdrawal application shall be denied, if, in the opinion of the Secretary, the applicant is attempting to circumvent the Congressional review provisions of section 204(c)(1) of the act (43 U.S.C. 1714(c)(1)) concerning withdrawals of 5,000 or more acres in the aggregate.

(e) When an application is denied in its entirety by the Secretary, a notice to that effect, signed by the Secretary, shall be published promptly in the **Federal Register.**

(f) In the case of a national defense withdrawal that may only be made by an act of Congress, the Secretary shall transmit to the Congress proposed legislation effecting the withdrawal requested, together with the recommendations of the Secretary which may or may not support the proposed legislation in whole or in part. The proposed legislation shall contain such provisions for continued operation of the public land laws as to the public land areas included in the requested withdrawal as shall be determined by the Secretary to be compatible with the intended military use.

§ 2310.3–4 Duration of withdrawals.

(a) An order initially withdrawing 5,000 or more acres of land in the aggregate, on the basis of the Secretary's authority under section 204 of the act (43 U.S.C. 1714), may be made for a period not to exceed 20 years from the date the order is signed, except that withdrawals exceeding 5,000 acres in the State of Alaska shall not become effective until notice is provided in the **Federal Register** and to both Houses of Congress. All orders withdrawing 5,000 or more acres in the aggregate shall be subject to the Congressional review provision of section 204(c) of the act (43 U.S.C. 1714(c)), except as follows:

(1) A National Wildlife Refuge System withdrawal may not be terminated as provided in section 204(c)(1) of the act (43 U.S.C 1714(c)(1)) other than by an act of Congress; or

(2) A withdrawal exceeding 5,000 acres in the State of Alaska shall terminate unless Congress passes a Joint Resolution of approval within 1 year after the notice of such withdrawal has been submitted to the Congress.

(b) An order initially withdrawing less than 5,000 acres of land, in the aggregate, on the basis of the Secretary's authority under section 204 of the act (43 U.S.C. 1714), may be made:

(1) For such time as the Secretary determines desirable for a resource use;

(2) For not more than 20 years for any other use, including, but not limited to, the use of lands for non-resource uses, related administrative sites and facilities or for other proprietary purposes; or

(3) For not more than 5 years to preserve the lands for a specific use then under consideration by either House of Congress.

(c) An order withdrawing lands on the basis of an emergency as provided for in section 204(e) of the act (43 U.S.C. 1714(e)) may be made for not more than 3 years.

(d) Except for emergency withdrawals, withdrawals of specific duration may be extended, as provided for in § 2310.4 of this title.

§ 2310.3–5 Compensation for improvements.

(a) When an application is allowed, the applicant shall compensate the holder of record of each permit, license or lease lawfully terminated or revoked after the allowance of an application, for all authorized improvements placed on the lands under the terms and conditions of the permit, license or lease, before the lands were segregated or withdrawn. The amount of such compensation shall be determined by an appraisal as of the date of revocation or termination of the permit, license or lease, but shall not exceed fair market value. To the extent such improvements were constructed with Federal funds, they shall not be compensable unless the United States has been reimbursed for such funds prior to the allowance of the application and then only to the extent of the sum that the United States has received.

(b) When an application is allowed that affects public lands which are subject to permits or leases for the grazing of domestic livestock and that is required to be terminated, the applicant shall comply with the cancellation notice and compensation requirements of section 402(g) of the act (43 U.S.C. 1752(g)), to the extent applicable.

§ 2310.3–6 Transfer of jurisdiction.

A public land order that reserves lands for a department, agency or office, shall specify the extent to which jurisdiction over the lands and their related resource uses will be exercised by that department, agency or office. (See § 2310.3–2(c) of this title).

§ 2310.4 Review and extensions of withdrawals.

(a) Discretionary withdrawals of specific duration, whether made prior to or after October 21, 1976, shall be reviewed by the Secretary commencing at least 2 years before the expiration date of the withdrawal. When requested, the department, agency or office benefitting from the withdrawal shall promptly provide the Secretary with the information required by § 2310.1–2(c) of this title, and the information required by § 2310.3–2(b) of this title, in the form of a withdrawal extension application with supplemental information. If the concerned department, agency or office is delinquent in responding to such request, the deliquency shall constitute a ground for not extending the withdrawal. Such withdrawals may be extended or further extended only upon compliance with these regulations, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period that shall not exceed the duration of the original withdrawal period. In allowing an extension, the Secretary shall comply with the provisions of section 204(c) of the act (43 U.S.C. 1714(c)), or section 204(d) of the act (43 U.S.C. 1714(d)), whichever is applicable; and, whether or not an extension is allowed, the Secretary shall report promptly on the decision for each pending extension to the Congressional Committees that are specified in section 204(f) of the act (43 U.S.C. 1714(f).

(b) Notwithstanding the provisions of this section, if the Secretary determines that a National Wildlife Refuge System withdrawal of specific duration shall not be extended, the Secretary shall nevertheless extend or reextend the withdrawal until such time as the withdrawal is terminated by an act of Congress.

§ 2310.5 Special action on emergency withdrawals.

(a) When the Secretary determines, or when either one of the two Committees of the Congress that are specified in section 204(e) of the act (43 U.S.C. 1714(e)) notifies the Secretary, that an emergency exists and that extraordinary measures need to be taken to protect natural resources or resource values that otherwise would be lost, the Secretary shall immediately make a withdrawal which shall be limited in its scope and duration to the emergency. An emergency withdrawal shall be effective when signed, shall not exceed 3 years in duration and may not be extended by the Secretary. If it is determined that the lands involved in an emergency withdrawal should continue to be withdrawn, a withdrawal application should be submitted to the Bureau of Land Management in keeping with the normal procedures for processing a withdrawal as provided for in this subpart. Such applications will be subject to the provisions of section 204(c) of the act (43 U.S.C. 1714(c)), or section 204(d) of the act (43 U.S.C. 1714(d), whichever is applicable, as well as section 204(b)(1) of the act (43 U.S.C. 1714(b)(1)).

(b) When an emergency withdrawal is signed, the Secretary shall on the same day, send a notice of the withdrawal to the two Committees of the Congress that are specified for that purpose in section 204(e) of the act (43 U.S.C. 1714(e)).

(c) The Secretary shall forward a report to each of the aforementioned committees within 90 days after filing with them the notice of emergency withdrawal. Reports for all such withdrawals, regardless of the amount of acreage withdrawn, shall contain the information specified in section 204(c)(2) of the act (43 U.S.C. 1714(c)(2)).

Subpart 2320—Federal Energy Regulatory Commission Withdrawals

§ 2320.0–3 Authority.

(a) Section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818), provides that any lands of the United States included in an application for power development

under that Act shall, from the date of filing of an application therefor, be reserved from entry, location or other disposal under the laws of the United States until otherwise directed by the Federal Energy Regulatory Commission or by Congress. This statute also provides that whenever the Commission shall determine that the value of any lands of the United States withdrawn or classified for power purposes shall not be injured or destroyed for such purposes by location, entry or selection under the public land laws, the Secretary of the Interior shall declare such lands open to location, entry or selection for such purposes under such restrictions as the Commission may determine are necessary, and subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy and use any and all of the lands for power purposes. Before any lands are declared open to location, entry or selection, the Secretary shall give notice of his intention to make this declaration to the Governor of the State within which such lands are located, and the State shall have a preference for a period of 90 days from the date of this notice to file under any applicable law or regulation an application of the State, or any political subdivision thereof, for any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways. The 90-day preference does not apply to lands which remain withdrawn for national forest or other purposes.

(b) The Mining Claims Rights Restoration Act of 1955 (30 U.S.C. 621 et seq.), opened public lands which were then, or thereafter, withdrawn or classified for power purposes, with specified exceptions, to mineral location and development under certain circumstances.

§ 2320.1 Lands considered withdrawn or classified for power purposes.

The following classes of lands of the United States are considered as withdrawn or classified for the purposes of section 24 of the Federal Power Act (16 U.S.C. 818): Lands withdrawn for powersite reserves under sections 1 and 2 of the Act of June 25, 1910, as amended (43 U.S.C. 141–148); lands included in an application for power development under the Federal Power Act (16 U.S.C. 818); lands classified for powersite purposes under the Act of March 3, 1879 (43 U.S.C. 31); lands designated as valuable for power purposes under the Act of June 25, 1910, as amended (43 U.S.C. 148); the Act of June 9, 1916 (39 Stat. 218, 219), and the Act of February 26, 1919 (40 Stat. 1178, 1180); lands within final hydroelectric power permits under the Act of February 15, 1901 (43 U.S.C. 959); and lands within transmission line permits or approved rights-of-way under the aforementioned Act of February 15, 1901, or the Act of March 4, 1911 (43 U.S.C. 961).

§ 2320.2 General determinations under the Federal Power Act.

(a) On April 22, 1922, the Federal Power Commission (as predecessor to the Federal Energy Regulatory Commission) made a general determination "that where lands of the United States have heretofore been or hereafter may be reserved or classified as powersites, such reservation or classification being made solely because such lands are either occupied by power transmission lines or their occupancy and use for such purposes have been applied for or authorized under appropriate laws of the United States, and such lands have otherwise no value for power purposes, and are not occupied in trespass, the Commission determines that the value of such lands so reserved or classified or so applied for or authorized, shall not be injured or destroyed for the purposes of power development by location, entry or selection under the public land laws, subject to the reservation of section 24 of the Federal Power Act."

(b) The regulations governing mining locations on lands withdrawn or classified for power purposes, including lands that have been restored and opened to mining locations under section 24 of the Federal Power Act, are contained in Subpart 3730 and in Group 3800 of this title.

§ 2320.3 Applications for restoration.

(a) Other than with respect to national forest lands, applications for restoration and opening of lands withdrawn or classified for power purposes under the provisions of section 24 of the Federal Power Act shall be filed, in duplicate, in the proper office of the Bureau of Land Management as set forth in § 2321.2–1 of this title. No particular form of application is required, but it shall be typewritten or in legible handwriting, and it shall contain the information required by 18 CFR 25.1. Each application shall be accompanied by a service charge of $10 which is not returnable.

(b) Favorable action upon an application for restoration shall not give the applicant any preference right when the lands are opened.

PARTS 2310, 2320, 2340, AND 2350—[REMOVED]

2. The following parts are removed as indicated:

(a) Part 2310—removed in its entirety.
(b) Part 2320—removed in its entirety.
(c) Part 2340—removed in its entirety.
(d) Part 2350—removed in its entirety.

PART 2090—SPECIAL LAWS AND RULES

§§ 2091.4 and 2091.2–5 [Removed]

3. Sections 201.2–4 and 2091.2–5 are removed from Subpart 2091.

Guy R. Martin,
Assistant Secretary of the Interior.
January 14, 1981.

[FR Doc. 81–1939 Filed 1–16–81; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2485]

Grazing Administration and Trespass on Public Lands; Amendments to Grazing Regulations

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)-315(r)), Section 4 of the Act of August 28, 1937 (43 U.S.C. 1181(d)), and the Federal Land Policy and Management Act of 1976, as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1701 et seq.), Part 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Section 4100.0–5 is amended by revising existing paragraphs (y) and (cc); deleting existing paragraph (w); redesignating existing paragraphs (b) through (t) as (c) through (u) respectively; redesignating existing paragraphs (u) and (v) as (w) and (x) respectively; redesignating existing paragraphs (x) through (bb) as (y) through (cc) respectively; redesignating existing paragraph (cc) as (ee); and inserting new paragraphs (b), (v) and (dd) to read as follows:

§ 4100.0–5 Definitions.

* * * * *

(b) "Affected interests" means any individual or organization who has been identified by the authorized officer as being potentially affected by a proposed action or who has expressed, in writing to the authorized officer, concern for the management of livestock grazing on specific grazing allotments. In addition to grazing permittees and lessees, such interests may include, for example, State officials, intermingled land owners, and wildlife or conservation representatives.

* * * * *

(v) "Monitoring" means the collection of data by a systematic and periodic examination of rangeland resources on specific areas by qualified individuals using techniques or methods, approved by the Director, designed to evaluate progres in meeting land-use or allotment management planning objectives.

* * * * *

(z) "Range improvement" means any activity on or relating to rangelands designed to improve production of forage, change vegetation composition, control pattern of use, provide water, stabilize soil and water conditions, and enhance habitat for livestock, fish, wildlife, and wild horses and burros.

* * * * *

(dd) "Suspended preference" means that portion of a grazing preference which has been suspended and for which active grazing use will not be reauthorized until forage is available and allocated for livestock grazing use on a sustained yield basis.

(ee) "Suspension" means temporarily withholding, in whole or in part, grazing use authorized under a grazing permit, lease or other grazing use authorization.

2. Section 4110.2–1 is amended by revising paragraphs (a) introductory text and (c) to read as follows:

§ 4110.2–1 Base property.

(a) The authorized officer shall find land or water owned or controlled by an applicant to be base property (see § 4100.0–5(g)) if:

* * * * *

(c) An applicant shall provide a legal description, or plat, of his base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section and § 4100.0–5(g).

3. Section 4110.2–3 is amended by revising paragraph (f) to read as follows:

§ 4110.2–3 Transfer of grazing preference.

* * * * *

(f) Failure of the transferee to comply with the regulations of this section may result in the cancellation of the grazing preference.

4. Section 4110.3 is revised to read as follows:

§ 4110.3 Changes in available forage.

The allocation of forage for livestock grazing shall be determined through the land use plan which has been prepared in consultation, coordination and cooperation with affected grazing permittees and lessees, owners of intermingled lands, and other affected interests.

5. Section 4110.3–1 is amended by adding paragraph (d) to read as follows:

§ 4110.3–1 Additional forage.

* * * * *

(d) Additional forage for livestock grazing use shall be allocated to qualified applicants by the authorized officer in accordance with the land use plan. The authorized officer shall provide that permanent increases in allocations of livestock forage be phased in over a period not to exceed 5 years, except that increases of 15 percent or less of the authorized active use for the previous year shall be phased in over a period of less than 5 years. The authorized officer may subsequently modify (either increase or decrease) the allocation of forage to livestock based on the results of monitoring and the land use plan.

6. Section 4110.3–2 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 4110.3–2 Decrease in forage.

* * * * *

(c) Suspensions under paragraph (b) of this section shall be implemented over a 5-year period, with an initial reduction taken on the effective date of the decision and the balance taken in the third and fifth years following the effective date of the decision, except as provided in paragraphs (d) and (e) of this section The initial reduction, in combination with other management actions specified in the decision, shall be sufficient to achieve significant progress toward achieving the vegetation objectives set forth in the land use plan for the five-year period. In allotments containing more than one permittee or lessee, suspensions under paragraphs (a) or (b) of this section shall be equitably apportioned by the authorized officer or as agreed among the permittees or lessees and the authorized officer.

(d) The authorized officer shall schedule suspensions under paragraph (b) of this section over a period of less than 5 years if, after consultation with the affected permittees or lessees and other affected interest—

(1) An agreement is reached to implement the suspension in less than 5 years;

(2) The authorized officer determines that the suspension is required within less than 5 years to sustain resource productivity, i.e., to protect the resource from substantial and long-term damage; or

(3) The total scheduled suspension is 15 percent or less of the authorized active grazing use for the previous year.

(e) Prior to implementation of each step of a phased suspension, the authorized officer shall review available information to determine whether the amount of the suspension should be modified (either increased or decreased). If the authorized officer determines that monitoring data indicate that the amount of a scheduled suspension should be modified, a new decision shall be issued under § 4160 of this title. However, the new decision shall not extend a phase-in period

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Circular Distribution List

established in a previous decision.

7. Section 4110.5 is amended by revising paragraph (a) to read as follows:

§ 4110.5 Conflicting applications.

* * * * *

(a) Historical use of the public lands (see § 4130.2(e));

* * * * *

8. Section 4120.2–2 is revised in its entirety to read as follows:

§ 4120.2–2 Other terms and conditions.

The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving objectives identified in land use plans, provide for proper range management, or assist in the orderly administration of the public rangelands. This may include, but is not limited to—

(a) The class of livestock that will graze on an allotment;

(b) The breed of livestock in allotments within which two or more permittees or lessees are authorized to graze;

(c) Authorization to use, and directions for the placement of, supplemental feed, including salt, for livestock on the public lands;

(d) A requirement that permittees or lessees, operating under a grazing permit or lease not incorporating an allotment management plan, submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, a report of the actual livestock grazing use made;

(e) The kinds of indigenous animals authorized to graze under specific terms and conditions;

(f) Provision for livestock grazing to be temporarily delayed, discontinued or modified to provide for the reproduction, establishment or restoration of vigor of plants, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth; and

(g) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee.

9. Section 4120.2–3 is amended by revising paragraph (a) to read as follows:

§ 4120.2–3 Allotment management plans.

* * * * *

(a) An allotment management plan shall be prepared in careful and considered consultation, cooperation, and coordination with its affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by such an allotment management plan, and when approved by the authorized officer shall be implemented (see § 4100.0–5(d) of this title). The allotment management plan shall include terms and conditions under 4120.2–1 of this title, may include terms and conditions under § 4120.2–2 of this title, and shall prescribe a system of grazing designed to meet specific management objectives. The plan shall include the limits of flexibility within which the permittee or lessee may adjust his/her operation without prior approval of the authorized officer. The plan shall provide for the collection of data that shall be used to evaluate the effectiveness of the system of grazing in achieving the specific objectives.

* * * * *

10. Section 4120.3 is revised in its entirety to read as follows:

§ 4120.3 Temporary modifications and closures to livestock use.

When the authorized officer determines that the soil, vegetation, or other resources on the public lands require temporary protection because of conditions such as drought, fire, flood, or insect infestation, and after consultation with affected permittees or lessees and other affected interests, action shall be taken either to close allotments or portions of allotments to grazing by any kind of livestock or to modify authorized grazing use.

(a) Notices of closure and decisions requiring modification of authorized grazing use shall be issued as final decisions which are placed in full force and effect under § 4160.3(c) of this title; and shall—

(1) State the reasons for the action;

(2) Specify the period of time during which the closure or modification will remain in effect and/or describe the resource conditions that must be present before the regularly authorized grazing use may resume;

(3) Be served personally or by certified mail to those who are authorized to graze livestock on the allotments affected;

(4) Require all owners of livestock affected to remove such livestock or modify grazing use as specified in the decision; and

(5) In the case of a closure, be published in the local newspaper(s) and be posted at the county courthouse and post office near the public land involved.

(b) The authorized officer shall modify grazing use authorizations as required by actions taken under paragraph (a) of this section.

(c) The authorized officer may, as provided under § 4150.5 of this title, impound, remove, and dispose of any livestock found in violation of a closure or modification of grazing use required under paragraph (a) of this section.

11. Section 4120.6–1 is amended by revising and redesignating existing paragraph (d) as paragraph (e) and inserting a new paragraph (d) to read as follows:

§ 4120.6–1 Conditions for range improvements.

* * * * *

(d) A range improvement permit or cooperative agreement does not convey to the permittee or cooperator right, title, or interest in any lands or resources held by the United States.

(e) When appropriated, one-half of the range betterment funds (see § 4130.5–1(f)) shall be available for use in the district from which the grazing fees were collected for the purpose of on-the-ground rehabilitation, protection, and improvement of public lands. The other one-half of the range betterment funds shall be used for on-the-ground range rehabilitation, protection, and improvement of public lands at the discretion of the Director. The range betterment funds shall be used as directed after consultations with user representatives. These funds shall be used for the installation, maintenance, modification, and removal of range improvements including such things as planning, environmental assessment, design, survey, materials, equipment, labor, and supervision related to these improvements.

12. Section 4120.6–3 is Revised to read as follows:

§ 4120.6–3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify range improvements that are needed to achieve management objectives within his designated allotment. The permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance. Such range improvement permits are issued at the discretion of the authorized officer.

(b) The permittee or lessee shall have title to removable range improvements authorized under range improvement permits.

(c) The use by livestock of stock ponds or wells on public lands which are recognized as base water under § 4110.2–1 of this title and authorized by a range improvement permit shall be controlled by the grazing permittee or lessee holding the range improvement permit.

13. Section 4130.2 is amended by revising paragraphs (d)(2), (d)(2)(v), (d)(3), (e)(2) and (e)(3); and adding a new paragraph (e)(4) to read as follows:

§ 4130.2 Grazing permits and leases.

* * * * *

(d) * * *

(2) Exceptions to the issuance of a grazing permit or lease for a term of 10 years shall be made on a case-by-case

basis. In determining whether the interest of sound land management warrants the issuance of a grazing permit or lease for less than 10 years, the following are elements that the authorized officer shall consider.

* * * * *

(v) Whether significant adverse environmental impacts will result from issuance of a grazing permit or lease for a term of 10 years;

* * * * *

(3) Grazing permits or leases shall be modified, suspended, or canceled as required by land use planning decisions.

* * * * *

(e) * * *

(2) The permittee or lessee is in compliance with the regulations contained in this part and the terms and conditions of his grazing permit or lease;

(3) The permittee or lessee accepts the terms and conditions to be included in the new permit or lease by the authorized officer; and

(4) The base property offered by a grazing lessee is contiguous to the public lands to be grazed or, if noncontiguous, there are no conflicting applications submitted by those offering qualified base property which would be contiguous to the public lands to be grazed.

14. Section 4130.5–1 is amended by revising paragraph (e) to read as follows:

§ 4130.5–1 Payment of fees.

* * * * *

(e) Fees are due upon issuance of the billing notice and must be aid in full prior to grazing use except where an allotment management plan providing for later payment has been incorporated in a grazing permit or lease. In such cases a billing notice based on actual use may be issued at the end of the grazing period or year, or a billing notice based on the normal operation may be issued prior to the grazing period or year followed by an adjusted billing notice based on actual use after grazing use has been completed. If an actual use report is not submitted, the amount due will be based on grazing use at the upper limit of flexibility specified in the allotment management plan. Actual use billing privileges shall be cancelled by the authorized officer where the permittee or lessee fails or refuses to—(1) submit a timely actual use report; or (2) make timely payment upon issuance of a billing notice based upon an actual use report or, if the actual use report has not been submitted, the upper level of flexibility specified in the allotment management plan. The permittee or lessee, however, is not relieved of the responsibility for submitting an actual use report under § 4120.2–3(e).

* * * * *

15. Section 4140.1 is amended by revising paragraphs (b)(1) and (b)(12) to read as follows:

§ 4140.1 Acts prohibited on public lands.

* * * * *

(b) * * *

(1) Allowing livestock on or driving livestock across these lands—

(i) Without a permit, lease or other grazing use authorization;

(ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under § 4120.4(d) of this title.

* * * * *

(12) Allowing privately owned or controlled indigenous animals on or driving them across these lands—

(i) Without a permit, lease or other grazing use authorization;

(ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, animals in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under § 4120.4(d) of this title.

16. Section 4150.3 is amended by revising paragraph (c) to read as follows:

§ 4150.3 Settlement.

* * * * *

(c) Violators shall not be authorized to make grazing use on the public lands or other lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer may take action under § 4160.1–2 or 4160.5, of this title, to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid.

17. Subpart 4150 is amended by adding a new § 4150.6 to read as follows;

* * * * *

§ 4150.6 Closure to control unauthorized grazing use.

To control unauthorized grazing use, the authorized officer may temporarily close allotments or portions of allotments to grazing by any kind or class of livestock different from those authorized to graze in the allotment, for a period not to exceed 12 months. The action taken by the authorized officer shall be specified in a written notice of closure which shall—

(a) State why the allotments, or portions of allotments, are being closed;

(b) Specify the kind or class of livestock to which the areas are closed;

(c) Specify the period for which the areas will be closed;

(d) Be published in the local newspaper(s);

(e) Be posted at the county courthouse and at a post office near the public land area involved;

(f) Be delivered personally or by certified mail to those who are authorized to graze livestock on the allotments affected;

(g) Be issued as a final decision in full force and effect under § 4160.3(c); and

(h) Require all owners of unauthorized livestock affected thereby to remove such livestock in accordance with provisions of the notice. The authorized officer may proceed to impound, remove, and dispose of any livestock found in violation of the closing notice after the closure date specified in the notice in accordance with § 4150.5–2 through § 4150.5–5 of this title.

18. Section 4160.1–1 is revised to read as follows:

§ 4160.1–1 Proposed decisions on permits or leases.

The authorized officer shall serve a proposed decision on any applicant, permittee or lessee, or his agent, or both, who is affected by his/her proposed action on applications for permits (including range improvement permits) or leases or by his/her proposed action related to terms and conditions or permits (including range improvement permits) or leases, by certified mail or personal delivery, and shall notify any lienholder of record of the proposed decision. The authorized officer shall also send copies to those who have indicated in writing that their interests may be affected by the proposed decision. The proposed decision shall state that reasons for the action, including reference to the pertinent terms, conditions and/or provisions of these regulations, and shall provide for a period of 15 days after receipt for the filing of a protest.

(a) Following completion of each grazing environmental impact statement and land use plan, the authorized officer shall prepare and distribute for public information a rangeland program summary and appropriate updates for the area before issuing proposed decisions to grazing permittees or lessees which would adjust livestock grazing use under §§ 4110.3–1(b) or 4110.3–2(b) of this title, unless a specific exception is approved by the State Director on a case-by-case basis because resource conditions require more immediate action.

(1) The rangeland program summary shall summarize the land use planning objectives and decisions for all rangeland uses and shall set forth those decisions that affect livestock grazing, including, for each allotment, the allocation of forage to livestock; the relationship of those planning decisions to the alternatives analyzed in the environmental impact statement; and the costs and benefits of the program. The rangeland program summary shall

also describe the procedures and time available for all affected interests to express their views or take action on decisions set forth in the document.

(2) Rangeland program summary updates shall be prepared prior to the initial adjustment and each subsequent step of phased adjustments scheduled under §§ 4110.3–1(d) and 4110.3–2(d) of this title. The first rangeland program summary update shall summarize the actions being proposed to achieve the land use planning objectives and to implement the land use planning decisions and the monitoring program for the area. Subsequent updates shall summarize, by allotment, the progress toward achieving these objectives and implementing these decisions and shall identify any proposals by the authorized officer to modify scheduled adjustments in livestock grazing use.

(b) The authorized officer shall include in proposed decisions which would adjust livestock grazing use under §§ 4110.3–1(b) or 4110.3–2(b) of this title the recognized grazing preference, the allocation of forage to livestock, the specific schedule for implementing the adjustments, the specific management objectives for the allotment, the resource values to be evaluated to determine progress in meeting these objectives, the changes in these values that would warrant a modification of the scheduled adjustments and other information necessary to set forth actions required to achieve the required management objectives for the allotment.

19. Section 4160.3 is amended by revising paragraph (c), and adding new paragraphs (d), (e) and (f) to read as follows:

§ 4160.3 Final decisions.

* * * * *

(c) A period of 30 days after receipt of the final decision is provided for filing an appeal. Decisions that are appealed shall be suspended pending final action except as otherwise provided in this section. Except where grazing use the preceding year was authorized on a temporary basis under § 4110.3–1(a) of this title, an applicant who was granted grazing use in the preceding year may continue at that level of authorized active use pending final action on the appeal except as further provided in paragraphs (e) and (f) of this section. However, if the authorized officer places the final decision in full force and effect, as provided in paragraph (d) of this section, it shall take effect on the date specified, regardless of appeal.

(d) A decision shall be placed in full force and effect on the date specified by the authorized officer, either a specific calendar date or the date at which a specific event occurs such as the date a decision is rendered on an appeal, if it would—

(1) Make a temporary modification in livestock use or close an area to livestock use under § 4120.3 of this title;

(2) Close an area to unauthorized grazing use under § 4150.6 of this title;

(3) Modify the terms and conditions of a permit or lease under § 4120.2–1(b) of this title; or

(4) Be required for the orderly administration of the range or the protection of resource values.

(i) Orderly administration of the range could, for example, include situations where—

(A) All members of a group of operators should be treated alike, e.g., in common use allotments where all but one operator are agreeable to a management program;

(B) Rangelands are managed as ephemeral or annual rangeland with no predetermined stocking level and grazing is allowed only when growth of forage plants occurs or utilization levels are used to determine when grazing use of such ranges should be extended or terminated;

(C) Range improvements shall be completed in a specific sequence in several allotments, e.g., a water pipeline servicing several allotments, and the level of grazing use or existing patterns of use in one or more of the allotments would not permit prudent investment in the improvement;

(D) Special project funding is directed by Congress; or

(E) Forage or water is not available due to fire, drought, insects, floods and other disasters.

(ii) The protection of resource values could, for example, necessitate a full force and effect decision where—

(A) Utilization of key forage species by grazing animals significantly exceeds the biological limit to sustain these species and long-term damage or loss of the forage plans would result if prompt action is not taken to modify grazing use;

(B) The trend in range condition is significantly declining in relation to management objectives with no probable change in trend unless prompt action is taken;

(C) Prompt action is needed to arrest accelerated erosion resulting from grazing which is causing a continual decline in site productivity and/or is causing measurable deterioration of water quality or other serious resource damage, either on- or off-site; or

(D) Livestock grazing use is threatening other significant resources, such as the habitat of threatened or endangered species, significant cultural properties or critical habitat for wildlife.

(e) As appeal of the fifth-year increment of a final decision, or of a decision on an application for grazing use in any year, shall not suspend implementation of the decision. An appeal of a decision which concerns grazing use to be made in the third year of a scheduled 5-year phase-in period shall suspend implementation of the decision and grazing use shall be authorized at the level scheduled for the first year of the phase-in period.

(f) Where a decision that provides for implementation of an action within a specified period of time is appealed and the decision is upheld, the final date for completing implementation shall remain as specified in the decision or 30 days from the effective date of the decision on the appeal, whichever is later.

20. Section 4160.5 is revised to read as follows:

§ 4160.5 Show cause.

Whenever it appears to the authorized officer that disciplinary action is advisable because a permittee or lessee has willfully or repeatedly violated provisions of this part, the authorized officer may serve a show cause notice on the permittee or lessee, or the operator's agent, or both, by certified mail or personal delivery and shall notify any lienholder of record. The show cause notice shall state the alleged violation and refer to the specific terms, conditions, and/or provisions of these regulations alleged to have been violated. As applicable, the notice shall state the amount due under § 4130.5–1 or 4150.3 of this title. The show cause notice shall cite the permittee or lessee to appear before an administrative law judge at a designated time and place, in accordance with § 4.470 of this title, to show cause why the grazing use authorized under his/her grazing permit or grazing lease should not be suspended in whole or in part or why his/her grazing permit or grazing lease and grazing preference should not be canceled in whole or in part under § 4170.1–1 of this title.

21. Section 4170.1–1 is revised to read as follows:

§ 4170.1–1 Penalty for violations.

(a) The authorized officer may withhold issuance of a grazing permit or lease, or suspend the grazing use authorized under a grazing permit or lease, in whole or in part, or cancel a grazing permit or lease and grazing preference, or a free use grazing permit or other grazing authorization, in whole or in part, under subpart 4160 of this title, for violation by a permittee or lessee of any of the provisions of this part.

(b) The authorized officer shall suspend the grazing use authorized under a grazing permit, in whole or in part, or shall cancel a grazing permit or lease and grazing preference, in whole or in part, under subpart 4160 of this title for repeated willful violation by a permittee or lessee of § 4140.1(b)(1) of this title.

(c) Whenever a nonpermittee or nonlessee violates § 4140.1(b) of this title and has not made satisfactory settlement under § 4150.3 of this title the authorized officer shall refer the matter to proper authorities for appropriate legal action by the United States against the violator.

22. Section 4170.1–3 is amended by revising paragraph (c) to read as follows:

§ 4170.1–3 Federal or State laws or regulations.

* * * * *

(c) The permittee or lessee has been convicted of or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of any agency charged with the administration of the conservation or environmental laws where no further appeals are outstanding.

Guy R. Martin,
Assistant Secretary of the Interior.
January 14, 1981.

[FR Doc. 81–1938 Filed 1–16–81; 8:45 am]

GPO 830 – 017

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2620

[Circular No. 2486]

State Grants; Amendments to the State Indemnity Selections Regulations

Under the authority of sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), Subpart 2621, Part 2620, Group 2600, Subchapter B, Chapter II of the Code of Federal Regulations is amended as set forth below.

§ 2621.1 [Removed]

§§ 2621.2—2621.5 [Renumbered 2621.1—2621.4]

1. Section 2621.1 is removed in its entirety and §§ 2621.2, 2621.3, 2621.4 and 2621.5 are renumbered 2621.1, 2621.2, 2621.3, and 2621.4 respectively.

§ 2621.1 [Amended]

2. Paragraph (d)(2) is removed from § 2621.2, renumbered 2621.1 above, and paragraphs (d)(3), (d)(4) and (d)(5) are renumbered (d)(2), (d)(3) and (d)(4) respectively.

3. Paragraph (d)(3) of the existing regulations, renumbered paragraph (d)(2) above, is revised to read as follows:

* * * * *

(d) * * *

(2) Separate base or bases do not have to be assigned to each smallest legal subdivision of selected surveyed lands or mineral estate and to each tract of unsurveyed lands upon application. However, prior to final approval of the selection, separate base or bases shall be assigned. Assignment of the smallest actual or probable legal subdivision as base will constitute an election to take indemnity for the entire subdivision and is a waiver of the State's rights to such subdivision, except that any remaining balance of acreage may be used as base in other selections.

* * * * *

4. Paragraph (e) is removed in its entirety from § 2621.2, renumbered 2621.1 above.

David C. Russell,

Deputy Assistant Secretary of the Interior.

April 10, 1981.

[FR Doc. 81-12866 Filed 4-28-81; 8:45 am]

Published in 46 F.R. 24135 April 29, 1981 - Effective May 29, 1981.

Circular Distribution List

GPO 831 - 596

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5400

[Circular No. 2487]

Sales of Forest Products; General

Under the authority of the Act of July 31, 1947, as amended (30 U.S.C. 601), Subpart 5400, Part 5400 and Subpart 5424, Part 5420, Subchapter E, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below:

1. Subpart 5424 is amended by adding two new §§ 5424.0–5 and 5424.1, and by revising § 5424.0–6(c)(2) to read as follows:

Subpart 5424—Preparation of Contract

§ 5424.0–5 Definitions.

When used in connection with export and substitution restrictions, the following terms apply:

"Purchaser" means a business entity including but not limited to an individual, partnership, corporation or association which buys Federal timber.

"Affiliate" means a business entity including but not limited to an individual, partnership, corporation or association which controls or is controlled by a purchaser, or, along with a purchaser, is controlled by a third business entity.

§ 5424.0–6 Policy.

* * * * *

(c) * * *

(2) The use of any timber of sawlog or peeler grades sold as a substitute for timber from private lands which is exported or sold for export by the purchaser or an affiliate of the purchaser.

§ 5424.1 Reporting provisions for substitution determination.

(a) To determine whether substitution has occurred, the authorized officer may require that information identified in the contract (OMB Clearance No. 1004–0058) be reported by:

(1) A purchaser who has exported private timber within one year preceding the purchase date of Federal timber, and/or

(2) An affiliate of a timber purchaser who exported private timber within one year before the acquisition of Federal timber from the purchaser.

(b) Purchasers or affiliates of purchasers shall retain a record of Federal timber acquisitions and private timber exports for three years from the date the activity occurred.

April 23, 1981.

David C. Russell,

Deputy Assistant Secretary of the Interior.

[FR Doc. 81-16192 Filed 5-29-81; 8:45 am]

Published in 46 F.R. 29262, June 1, 1981 - Effective July 1, 1981.

Circular Distribution List

GPO 831-597

Library

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

[Circular No. 2488]

Amendment To Provide Segregation for State Indemnity Lands

Under authority of sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), Subpart 2091, Part 2090, Group 2000, Subchapter B, Chapter II of the Code of Federal Regulations is amended as follows:

A new § 2091.2–6 is added as follows:

§ 2091.2 Upon application for.

* * * * *

§ 2091.2–6 State indemnity selections.

The filing of an application for selection under the provisions of Subpart 2621 of this part shall segregate the lands described in the application from settlement, sale, locations or entry under the public land laws, including the mining laws, but not the mineral leasing laws or the Geothermal Steam Act. The authorized officer shall promptly publish in the **Federal Register** a notice of the filing of the selection application. Any other type of application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of the selection application on the public lands shall terminate upon issuance of a document of conveyance to such lands, or upon publication in the **Federal Register** of a notice of termination of the segregation or the expiration of 2 years from the date of the filing of the selection application, whichever occurs first. However, where administrative appeal or review actions have been sought pursuant to Part 4 or Subpart 2450 of this title, the segregative period shall continue in effect until publication of a notice of termination of the segregation in the **Federal Register**.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
July 9, 1981.

[FR Doc. 81–21944 Filed 7–27–81; 8:45 am]

Published in 46 F.R. 38508, July 28, 1981 - Effective August 27, 1981.

Circular Distribution List

GPO 832 - 632

Library

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5440 and 5450

[Circular No. 2489]

Timber Sales: Conduct of Sale; Advertised Sale and Award of Contract; Bonds

Under the authority of the Act of July 31, 1947, as amended (30 U.S.C. 601), Subpart 5441, Part 5440 and Subpart 5451, Part 5450, Group 5400, Subchapter E, Chapter II, Title 43 of the Code of Federal Regulation is amended as set forth below.

PART 5440—CONDUCT OF SALES

§ 5441.1-1 [Amended]

1. Section 5441.1-1 is amended by revising the fourth sentence as follows:

* * * "Deposits may be in the form of cash, money orders, bank drafts, cashiers' or certified checks made payable to the Bureau of Land Management, bid bonds of a corporate surety shown on the approved list of the United States Treasury Department or any guaranteed remittance approved by the authorized officer." * * *

PART 5450—AWARD OF CONTRACT

2. Section 5451.1(a) is amended by adding a new paragraph (5) as follows:

§ 5451.1 Minimum performance bond requirements; types.

(a) * * *

(5) Any guaranteed remittance approved by the authorized officer.

§ 5451.4 [Amended]

3. Section 5451.4 is amended by revising the third sentence as follows:

* * * "The payment bond may be a bond of a corporate surety shown on the approved list issued by the United States Treasury Department and executed on an approvd form, negotiable securities of the United States, or any guaranteed remittance approved by the authorized officer."

* * *

Frank A. DuBois,

Acting Assistant Secretary of the Interior.

July 28, 1981.

[FR Doc. 81-24523 Filed 8-21-81; 8:45 am]

Published in 46 F.R. 42673, August 24, 1981 - Effective August 24, 1981.

Circular Distribution List

GPO 832-633

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 9210

[Circular No. 2490]

Wildfire Prevention

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Group 9200, Subchapter I, Chapter II, Title 43 of the Code of Federal Regulations is amended by adding a new Part 9210 consisting of Subpart 9212 as follows:

PART 9210—FIRE MANAGEMENT

Subpart 9212—Wildfire Protection

Sec.

9212.0–1 Purpose.
9212.0–2 Objective.
9212.0–3 Authority.
9212.0–5 Definitions.
9212.0–6 Policy.
9212.1 Prohibited acts.
9212.2 Fire prevention orders.
9212.3 Permits.
9212.4 Penalties.

Authority: 43 U.S.C. 1701 et seq.

Subpart 9212—Wildfire Prevention

§ 9212.0–1 Purpose.

The purpose of this subpart is to set forth procedures to prevent wildfires on the public lands.

§ 9212.0–2 Objective.

The objective of this subpart is to prevent wildfires on the public lands.

§ 9212.0–3 Authority.

This subpart is issued under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

§ 9212.0–5 Definitions.

As used in this subpart, the term:

(a) "Person" means individuals, corporations, companies, associations, firms, partnerships, societies or joint stock companies.

(b) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.

(c) "Public lands" means any lands and interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except—

(1) Lands located on the Outer Continental Shelf; and

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

(d) "fire" means the burning of timber, trees, slash, brush, tundra, grass or other flammable material such as, but not limited to, petroleum products, trash, rubbish, lumber, paper, cloth or agricultural refuse occurring out of doors and includes "campfire" as defined in this section.

(e) "Campfire" means a controlled fire occurring out of doors used for cooking, branding, personal warmth, lighting, ceremonial or esthetic purposes.

(f) "Permit" means authorization in writing by the authorized officer.

(g) "Closed area" means public lands closed to entry by a Bureau of Land Management fire prevention order.

(h) "Wildlife" means any wildland fire that requires a suppression response.

(i) "Restricted area" means public lands restricted as to use(s) by a Bureau of Land Management fire prevention order.

§ 9212.0–6 Policy.

It is the policy of the Bureau of Land Management to take all necessary actions to protect human life, the public lands and the resources and improvements thereon through the prevention of wildfires. Wherever possible, the Bureau of Land Management's actions will complement and support State and local wildfire prevention actions.

§ 9212.1 Prohibited acts.

Unless permitted in writing by the authorized officer, it is prohibited on the public lands to—

(a) Cause a fire, other than a campfire, or the industrial flaring of gas, to be ignited by any source;

(b) Fire a tracer or incendiary device;

(c) Burn, timber, trees, slash, brush, tundra or grass except as used in campfires;

(d) Leave a fire without extinguishing it, except to report it if it has spread beyond control;

(e) Build, attend, maintain or use a campfire without removing all flammable material from around the campfire adequate to prevent its escape;

(f) Resist or interfere with the efforts of firefighter(s) to extinguish a fire;

(g) Enter an area which is closed by a fire prevention order, or

(h) perform any act restricted by a fire prevention order.

§ 9212.2 Fire prevention orders.

(a) To prevent wildfire or facilitate its suppression, an authorized officer may issue fire prevention orders that close entry to, or restrict uses of, designated public lands.

(b) Each fire prevention order shall—

(1) Identify the public lands, roads, trails or waterways that are closed to entry or restricted as to use;

(2) Specify the time during which the closure or restriction shall apply;

(3) Identify those persons who, without a written permit, are exempt from the closure or restrictions;

(4) Be posted in the local Bureau of Land Management office having jurisdiction over the lands to which the order applies; and

(5) Be posted at places near the closed or restricted area where it can be readily seen.

§ 9212.3 Permits.

(a) Permits may be issued to enter and use public lands designated in fire prevention orders when the authorized officer determines that the permitted activities will not conflict with the purpose of the order.

(b) Each permit shall specify—

(1) The public lands, roads, trails or waterways where entry or use is permitted;

(2) The person(s) to whom the permit applies;

(3) Activities that are permitted in the closed area;

(4) fire prevention requirements with which the permittee shall comply; and

(5) An expiration date.

(c) An authorized officer may cancel a permit at any time.

§ 9212.4 Penalties.

Any person who knowingly and willfully violates the regulations at § 9212.1 of this title shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment of not more than 12 months, or both.

Frank A. DuBois,
Acting Assistant Secretary of the Interior.
August 3, 1981.

[FR Doc. 81-24550 Filed 8-21-81; 8:45 am]

Published in 46 F.R. 42828, August 24, 1981 - Effective September 23, 1981.

Circular Distribution List

GPO 832 - 634

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100 and 3110

[Circular No. 2491]

Oil and Gas Leasing; Increase in Filing Fees Accompanying Noncompetitive Oil and Gas Lease Applications

Under the authority of the Omnibus Budget Reconciliation Act, Parts 3100 and 3110, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are amended as follows.

PART 3100—OIL AND GAS LEASING

§ 3103.1-3 [Amended]

1. Section 3103.1–3 is amended by deleting the figure "$10" where it appears and replacing it with the figure "$25".

§ 3103.2-1 [Amended]

2. Section 3103.2–1(a) is amended by deleting the figure "$10" where it appears and replacing it with the figure "$25".

PART 3110—NONCOMPETITIVE LEASES

§ 3111.1-3 [Amended]

3. Section 3111.1–3(a) is amended by deleting the figure "$10" where it appears and replacing it with the figure "$25".

§ 3112.2-2 [Amended]

4. Section 3112.2–2(a) is amended by deleting the figure "$10" where it appears and replacing it with the figure "$25".

Garrey E. Carruthers,
Assistant Secretary of the Interior.
August 31, 1981.

[FR Doc. 81-28624 Filed 9-14-81; 8:45 am]

Published in 46 F.R. 45887, September 15, 1981 - Effective October 1, 1981.

Circular Distribution List

GPO 832-913

#2491

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100 and 3110

[Circular No. 2491]

Oil and Gas Leasing; Increase in Filing Fees Accompanying Noncompetitive Oil and Gas Lease Applications

Correction

In FR Doc. 81-26824, appearing on page 45887, in the issue of Tuesday, September 15, 1981, make the following change:

On page 45887, in the first column, the fifth line from the bottom now reading "and, therefore, noncompetitive oil and" should be changed to read "and, therefore, no noncompetitive oil and".

1505-01-M

43 CFR Part 9260

[Circular No. 2462]

Public Lands and Resources; Law Enforcement—Criminal; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors contained in the final regulations published in the Federal Register (45 FR 31276) on May 12, 1980, that placed all law enforcement provisions applying to public lands and resources in one subpart of Title 43 of the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: George B. Hollis at (202) 343-8735.

43 CFR Part 9260 as published in Volume 45 of the Federal Register (45 FR 31276) is corrected as follows:

PART 9260—LAW ENFORCEMENT — CRIMINAL

1. Section 9268.3(e), in the first sentence of paragraph (2)(i), the words "Title 18 of the United States Code" shall be corrected to read "this Act."

2. Section 9268.3(e), in the first sentence of paragraph (2)(ii), the words "issued under Title 16 of the United States Code" shall be corrected to read, "issued under section 460 *l*-6e of Title 16 of the United States Code".

3. Section 9268.3(e), in paragraph (2)(iv) shall be corrected by inserting the words "section 1246(i) of" between the words "under" and "Title".

Dated: September 4, 1981.

Frank A. DuBois,

Acting Assistant Secretary of the Interior.

[FR Doc. 81-27465 Filed 9-21-81; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA 6138]

List of Withdrawal of Flood Insurance Maps Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities where Flood Insurance Rate Maps or Flood Hazard Boundary Maps published by the Director, Federal Emergency Management Agency, have been temporarily withdrawn for administrative or technical reason. During that period that the map is withdrawn, the insurance purchase requirement of the National Flood Insurance Program is suspended.

EFFECTIVE DATE: The date listed in the fifth column of the table.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Smith, National Flood Insurance Program, (202) 387-0220 or EDS Toll Free Line 800-638-6620 for Continental U.S. (except Maryland); 800-638-6831 for Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and 800-492-6605 for Maryland, 500 C Street Southwest, Donohoe Building, Room 509, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The list includes the date that each map was withdrawn, and the effective date of its republication, if it has been republished. If a flood-prone location is now being identified on another map, the community name for the effective map is shown.

The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, requires, at section 102, the purchase of flood insurance as a condition of Federal financial assistance if such assistance is:

(1) For acquisition and construction of buildings, and

(2) For buildings located in a special flood hazard area identified by the Director of Federal Emergency Management Agency.

The insurance purchase requirement with respect to a particular community may be altered by the issuance or withdrawal of the Federal Emergency Management Agency's (FEMA) official Flood Insurance Rate Map (FIRM) or the Flood Hazard Boundary Map (FHBM). A FHBM is usually designated by the letter "E" following the community number and a FIRM by the letter "R" following the community number. If the FEMA withdraws a FHBM for any reason the insurance purchase requirement is suspended during the period of withdrawal. However, if the community is in the Regular Program and only the FIRM is withdrawn but a FHBM remains in effect, then flood insurance is still required for properties located in the identified special flood hazard areas shown on the FHBM, but the maximum amount of insurance available for new applications or renewal is first layer coverage under the Emergency Program, since the community's Regular Program status is suspended while the map is withdrawn. (For definitions see 44 CFR Part 59 et seq.)

This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities. As the purpose of this revision is the convenience of the public, notice and public procedure are unnecessary, and cause exists to make this amendment effective upon publication.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. Accordingly, Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations is amended as follows:

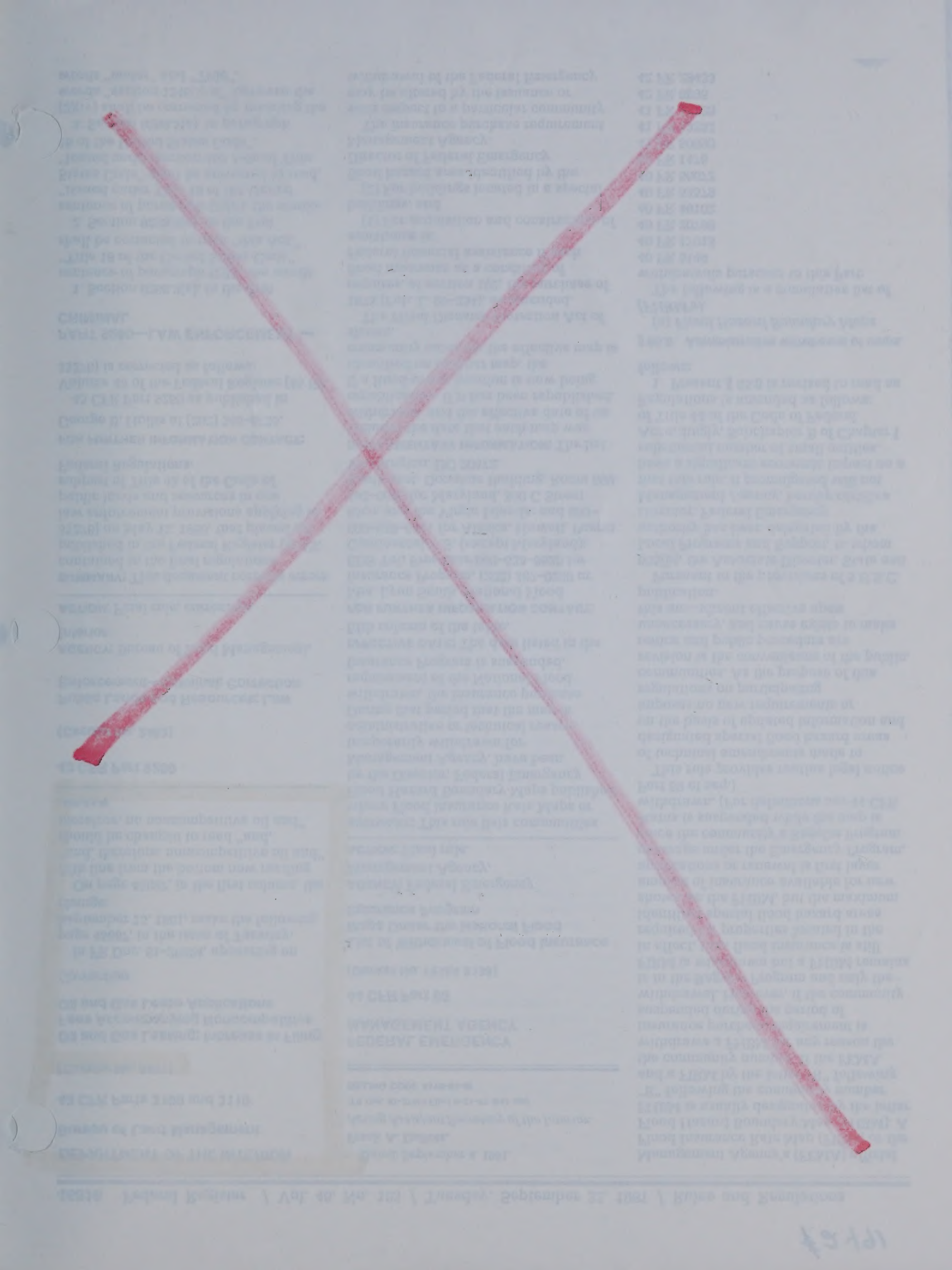
1. Present § 65.6 is revised to read as follows:

§ 65.6 Administrative withdrawal of maps.

(a) *Flood Hazard Boundary Maps (FHBM's).*

The following is a cumulative list of withdrawals pursuant to this Part:

40 FR 5149
40 FR 17015
40 FR 20798
40 FR 46102
40 FR 53579
40 FR 56672
41 FR 1478
41 FR 50990
41 FR 13352
41 FR 17726
42 FR 8895
42 FR 29433



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3130 and 3140

[Circular No. 2492]

Procedures for Leasing of Oil and Gas in the National Petroleum Reserve; Alaska

Under the authority of the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514), Group 3100, Subchapter C, Chapter II of the Code of Federal Regulations is amended as set forth below.

PART 3140—FRACTIONAL OR FUTURE INTEREST LEASES AND PERMITS [Redesignated from Part 3130]

1. Existing Part 3130 is redesignated Part 3140.

2. A new Part 3130 is added to read:

PART 3130—OIL AND GAS LEASING—NATIONAL PETROLEUM RESERVE—ALASKA

The information collection requirements contained in Part 3130 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0067. The information is being collected to allow the authorized officer to determine if the bidder is qualified to hold a lease. The information will be used in making that determination. The obligation to respond is required to obtain a benefit.

Subpart 3130—Oil and Gas Leasing—National Petroleum Reserve—Alaska; General

Sec.

3130.0-1 Purpose.
3130.0-2 Policy.
3130.0-3 Authority.
3130.0-5 Definitions.
3130.0-7 Cross references.
3130.1 Attorney General review.
3130.2 Limitation on time to institute suite to contest a Secretary's decision.
3130.3 Drainage.
3130.4 Leasing general.
3130.4-1 Tract size.
3130.4-2 Lease term.
3130.5 Bona fide purchasers.
3130.6 Leasing maps and land descriptions.
3130.6-1 Leasing maps.
3130.6-2 Land descriptions.

Subpart 3131—Leasing Program

3131.1 Receipt and consideration of nominations; public notice and participation.
3131.2 Tentative tract selection.
3131.3 Special stipulations.
3131.4 Lease sales.
3131.4-1 Notice of sale.

Subpart 3132—Issuance of Leases.

3132.1 Who may hold a lease.
3132.2 Submission of bids.
3132.3 Payments.
3132.4 Qualifications statements.
3132.5 Award of leases.
3132.5-1 Forms.
3132.5-2 Dating of leases.

Subpart 3133—Rentals and Royalties.

3133.1 Rentals.
3133.2 Royalties.
3133.2-1 Minimum royalties.

Subpart 3134—Bonding—General

3134.1 Bonding.
3134.1-1 Form of bond.
3134.1-2 Additional bonds.

Subpart 3135—Assignments, Transfers and Extensions

3135.1 Assignments, transfers and extensions, general.
3135.1-1 Assignments.
3135.1-2 Requirements for filing of transfers.
3135.1-3 Separate filings for assignments.
3135.1-4 Effect of assignment of a particular tract.
3135.1-5 Extension of lease.

Subpart 3136—Relinquishments, Terminations and Cancellations of Leases

3136.1 Relinquishment of leases or parts of leases.
3136.2 Terminations.
3136.3 Cancellation of leases.

Authority: The Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514); 42 U.S.C. 6504; 43 U.S.C. 1701 et seq.

Subpart 3130—Oil and Gas Leasing—National Petroleum Reserve—Alaska; General

§ 3130.0-1 Purpose.

These regulations establish the procedures under which the Secretary of the Interior will exercise the authority granted to administer a competitive leasing program for oil and gas within the National Petroleum Reserve—Alaska.

§ 3130.0-2 Policy.

The oil and gas leasing program within the National Petroleum Reserve—Alaska shall be conducted in accordance with the purposes and policy directions provided by the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514), and other executive, legislative, judicial and Department of the Interior guidance.

§ 3130.0-3 Authority.

(a) The Department of the Interior Appropriations Act, Fiscal year 1981 (Pub. L. 96-514);

(b) The Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504, et seq.); and

(c) The Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), except that sections 202 and 603 are not applicable.

§ 3130.0-5 Definitions.

As used in this part, the term:

(a) "Act" means the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514).

(b) "Bureau" means the Bureau of Land Management.

(c) "Constructive operations" means the exploring, testing, surveying or otherwise investigating the potential of a lease for oil and gas or the actual drilling or preparation for drilling of wells therefor.

(d) "NPR-A" means the area formerly within Naval Petroleum Reserve Numbered 4 Alaska which was redesignated as the National Petroleum Reserve—Alaska by the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501).

(e) "Regional Conservation Manager" means the U.S. Geological Survey's Regional Conservation Manager stationed at Anchorage, Alaska.

(f) "Reworking operations" means all operations designed to secure, restore or improve production through some use of a hole previously drilled, including, but not limited to, mechanical or chemical treatment of any horizon, deepening to test deeper strata and plugging back to test higher strata.

(g) "Special Areas" means the Utokok River, the Teshekpuk Lake areas and other areas within NPR—A identified by the Secretary as having significant subsistence, recreational, fish and wildlife or historical or scenic value.

§ 3130.1 Attorney General review.

(a) Prior to the issuance of any lease, contract or operating agreement under this subpart, the Secretary shall notify the Attorney General of the proposed issuance, the name of the successful bidder, the terms of the proposed lease, contract or operating agreement and any other information the Attorney General may require to conduct an antitrust review of the proposed action. Such other information shall include, but is not limited to, information to be provided the Secretary by the successful

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Circular Distribution List

bidder or its owners.

(b) In advance of the publication of any notice of sale, the Attorney General shall notify the Secretary of his/her preliminary determination of the information each successful bidder shall be required to submit for antitrust review purposes. The Secretary shall require this information to be promptly submitted by successful bidders, and may provide prospective bidders the opportunity to submit such information in advance of or accompanying their bids. For subsequent notices of sale, the Attorney General's preliminary information requirements shall be as specified for the prior notice unless a change in the requirements is communicated to the Secretary in advance of publication of the new notice of sale. Where a bidder in a prior sale has previously submitted any of the currently required information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in the information since the date of the previous submission, shall be sufficient.

(c) The Secretary shall not issue any lease, contract or operating agreement until:

(1) Thirty days after the Attorney General receives notice from the Secretary of the proposed lease contract or operating agreement, together with any other information required under this section; or

(2) The Attorney General notifies the Secretary that issuance of the proposed lease, contract or operating agreement does not create or maintain a situation inconsistent with the antitrust laws, whichever comes first. The Attorney General shall inform the successful bidder, and simultaneously the Secretary, if the information supplied is insufficient, and shall specify what information is required for the Attorney General to complete his/her review. The 30-day period shall stop running on the date of such notification and not resume running until the Attorney General receives the required information.

(d) The Secretary shall not issue the lease, contract for operating agreement to the successful bidder, if, during the 30-day period, the Attorney General notifies the Secretary that such issuance would create or maintain a situation inconsistent with the antitrust laws.

(e) If the Attorney General does not reply in writing to the notification provided under paragraph (a) of this section within the 30-day review period, the Secretary may issue the lease, contract or operating agreement without waiting for the advice of the Attorney General.

(f) Information submitted to the Secretary to comply with this section shall be treated by the Secretary and by the Attorney General as confidential and proprietary data if marked confidential by the submitting bidder or other person. Such information shall be submitted to the Secretary in sealed envelopes and shall be transmitted in that form to the Attorney General.

(g) The procedures outlined in paragraphs (a) through (f) of this section apply to the proposed assignment or transfer of any lease, contract or operating agreement.

§ 3130.2 Limitation on time to institute suit to contest a Secretary's decision.

Any action seeking judicial review of the adequacy of any programmatic or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in NPR–A shall be barred unless brought in the appropriate District Court within 60 days after notice of availability of such statement is published in the **Federal Register.**

§ 3130.3 Drainage

Upon a determination by the Director, U.S. Geological Survey, that lands owned by the United States within NPR–A are being drained, the regulations under § 3100.3 of this title, including the provisions relating to compensatory agreements or royalties, shall apply.

§ 3130.4 Leasing—general.

§ 3130.4–1 Tract size.

A tract selected for leasing shall consist of a compact area of not more than 60,000 acres.

§ 3130.4–2 Lease term.

Each lease shall be issued for a primary term of 10 years, unless a shorter term is provided in the notice of sale.

§ 3130.5 Bona fide purchasers.

The provisions of § 3102.1–2 of this title shall apply to bona fide purchasers of leases within NPR–A.

§ 3130.6 Leasing maps and land descriptions.

§ 3130.6–1 Leasing maps.

The Bureau shall prepare leasing maps showing the tracts to be offered for lease sale.

§ 3130.6–2 Land descriptions.

(a) All tracts shall be composed of entire sections either surveyed or protracted, whichever is applicable, except that if the tracts are adjacent to upland navigable water areas, they may be adjusted on the basis of subdivisional parts of the sections.

(b) Leased lands shall be described according to section, township and range in accordance with the official survey or protraction diagrams.

Subpart 3131—Leasing Program

§ 3131.1 Receipt and consideration of nominations; public notice and participation.

During preparation of a proposed leasing schedule, the Secretary shall invite and consider suggestions and relevant information for such program from the Governor of Alaska, local governments, Native corporations, industry, other Federal agencies, including the Attorney General and all interested parties, including the general public. This request for information shall be issued as a notice in the **Federal Register.**

§ 3131.2 Tentative tract selection.

(a) The State Director Alaska, Bureau of Land Management, shall issue calls for Nominations and Comments on tracts for leasing for oil and gas in specified areas. The call for Nominations and Comments shall be published in the **Federal Register** and may be published in other publications as desired by the State Director. Nominations and Comments on tracts shall be addressed to the State Director Alaska, Bureau of Land Management, with a copy to the Regional Conservation Manager, U.S. Geological Survey. The State Director shall also request comments on tracts which should receive special concern and analysis.

(b) The State Director, after completion of the required environmental analysis (See 40 CFR 1500–1508), shall, in consultation with the Regional Conservation Manager, select tracts to be offered for sale. In making the selection, the State Director shall consider available environmental information, multiple-use conflicts, resource potential, industry interest, information from appropriate Federal agencies and other available information. The State Director shall develop measures to mitigate adverse impacts, including lease stipulations and information to lessees. These mitigating measures shall be made public in the notice of sale.

§ 3131.3 Special stipulations.

Special stipulations shall be developed to the extent the authorized officer deems necessary and appropriate for mitigating reasonably foreseeable and significant adverse impacts on the surface resources. Special Areas stipulations for exploration or production shall be developed in accordance with section 104 of the Naval Petroleum Reserves Production Act of 1976. Any special stipulations and conditions shall be set forth in the notice of sale and shall be attached to and made a part of the lease, if issued. Additional stipulations needed to protect surface resources and special areas may be imposed at the time the

surface use plan and permit to drill are approved.

§ 3131.4 Lease sales.

§ 3131.4-1 Notice of sale.

(a) The State Director Alaska, Bureau of Land Management, shall publish the notice of sale in the Federal Register, and may publish the notice in other publications if he/she deems it appropriate. The publication in the Federal Register shall be at least 30 days prior to the date of the sale. The notice shall state the place and time at which bids are to be filed, and the place, date and hour at which bids are to be opened.

(b) Tracts shall be offered for lease by competitive sealed bidding under conditions specified in the notice of lease sale and in accordance with all applicable laws and regulations. Bidding systems used in sales shall be based on bidding systems included in section (205)(a)(1)(A) through (H) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1801 et seq.).

(c) A detailed statement of the sale, including a description of the areas to be offered for lease, the lease terms, conditions and special stipulations and how and where to submit bids shall be made available to the public immediately after publication of the notice of sale.

Subpart 3132—Issuance of leases

§ 3132.1 Who may hold a lease.

Leases issued pursuant to this subpart may be held only by:

(a) Citizens and nationals of the United States;

(b) Aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20);

(c) Private, public or municipal corporations organized under the laws of the United States or of any State or of the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or any of its territories; or

(d) Associations of such citizens, nationals, resident aliens or private, public or municipal corporations.

§ 3132.2 Submission of bids.

(a) A separate sealed bid shall be submitted for each tract in the manner prescribed. A bid shall not be submitted for less than an entire tract.

(b) Each bidder shall submit with the bid a certified or cashier's check, bank draft, U.S. currency or any other form of payment approved by the Secretary for one-fifth of the amount of the cash bonus, unless stated otherwise in the notice of sale.

(c) Each bid shall be accompanied by statements of qualifications prepared in accordance with § 3132.4 of this title.

(d) Bidders are bound by the provisions of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

§ 3132.3 Payments.

(a) Payments of bonuses, including deferred bonuses, first year's rental, other payments due upon lease issuance, filing charges and fees shall be made to the Alaska State Office, Bureau of Land Management. All payments shall be made by certified or cashier's check, bank draft, U.S. currency or any other form of payment approved by the Secretary. Payments shall be made payable to the Bureau of Land Management, unless otherwise directed.

(b) All other payments required by a lease or the regulations in this part shall be payable to the U.S. Geological Survey.

§ 3132.4 Qualifications statements.

(a) If the bidder is an individual, a statement of citizenship shall accompany the bid or group of bids.

(b) If the bidder is an association (including a partnership), the bid or group of bids shall be accompanied by a certified copy of the articles of association or appropriate reference to the serial number of the record and the office of the Bureau in which such copy has already been filed with a statement as to any amendments thereto.

(c) If the bidder is a corporation, the following information shall be submitted with the bid:

(1) A statement showing the State in which it is incorporated and that it is authorized to hold Federal oil and gas leases in NPR–A or appropriate reference to the serial number of the record and the office of the Bureau in which such statement has already been filed with a statement as to any amendments thereto.

(2) A statement attesting to the authority of the person who signed the bid to bind the corporation, or reference to the serial number of the record and the office of the Bureau in which a copy of such statement has already been filed with a statement as to any amendments to the authority.

§ 3132.5 Award of leases.

(a) Sealed bids received in response to the notice of lease sale shall be opened at the place, date and hour specified in the notice of sale. The opening of bids is for the sole purpose of publicly announcing and recording the bids received. No bids shall be accepted or rejected at that time.

(b) The United States reserves the right to reject any and all bids received for any tract, regardless of the amount offered.

(c) In the event the highest bids are tie bids, the tying bidders shall be allowed to submit within 15 days of the public announcement of a tie bid additional sealed bids to break the tie. The additional bids shall include any additional amount necessary to bring the amount tendered with his/her bid to one-fifth of the additional bid. Additional bids to break tie bids shall be processed in accordance with paragraph (a) of this section.

(d) If the authorized officer fails to accept the highest bid for a lease within 90 days or a lesser period of time as specified in the notice of sale, the highest bid for that lease shall be considered rejected. This 90-day period or lesser period as specified in the notice of sale shall not include any period of time during which acceptance, rejection or other processing of bids and lease issuance by the Department of the Interior are enjoined or prohibited by court order.

(e) Written notice of the final decision on the bids shall be transmitted to those bidders whose deposits have been held in accordance with instructions set forth in the notice of sale. If a bid is accepted, 2 copies of the lease shall be transmitted with the notice of acceptance to the successful bidder. The bidder shall, not later than the 15th day after receipt of the lease, sign both copies of the lease and return them, together with the first year's rental and the balance of the bonus bid, unless deferred, and shall file a bond, if required to do so. Deposits shall be refunded on rejected bids.

(f) If the successful bidder fails to execute the lease within the prescribed time or otherwise to comply with the applicable regulations, the deposit shall be forfeited and disposed of as other receipts under the Act.

(g) If the awarded lease is executed by an attorney-in-fact acting on behalf of the bidder, the lease shall be accompanied by evidence that the bidder authorized the attorney-in-fact to execute the lease on his/her behalf. Reference may be made to the serial number of the record and the office of the Bureau of Land Management in which such evidence has already been filed.

(h) When the executed lease is returned to the authorized officer, he/she shall within 15 days of receipt of the material required by paragraph (e) of this section, execute the lease on behalf of the United States. A copy of the fully executed lease shall be transmitted to the lessee.

§ 3132.5-1 Forms.

Leases shall be issued on forms approved by the Director.

§ 3132.5-2 Dating of leases.

All leases issued under the regulations in this part shall become effective as of the first day of the month following the date they are signed on behalf of the United States. When prior written

request is made, a lease may become effective as of the first day of the month within which it is signed on behalf of the United States.

Subpart 3133—Rentals and Royalties

§ 3133.1 Rentals.

(a) An annual rental shall be due and payable at the rate prescribed in the notice of sale and the lease, but in no event shall such rental be less than $3 per acre, or fraction thereof. Payment shall be made on or before the first day of each lease year prior to discovery of oil or gas on the lease.

(b) If there is no actual or allocated production on the portion of a lease that has been segregated from a producing lease, the owner of such segregated lease shall pay an annual rental for such segregated portion at the rate per acre specified in the original lease. This rental shall be payable each lease year following the year in which the segregation became effective and prior to discovery of oil or gas on such segregated portion.

(c) Annual rental paid in any year shall be in addition to, and shall not be credited against, any royalties due from production.

§ 3133.2 Royalties.

Royalties on oil and gas shall be at the rate specified in the notice of sale as to the tracts, if appropriate, and in the lease, unless the Secretary, in order to promote increased production on the leased area through direct, secondary or tertiary recovery means, reduces or eliminates any royality set out in the lease.

§ 3133.2-1 Minimum royalties.

For leases which provide for minimum royalty payments, each leasee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the first lease year following a discovery on the lease.

Subpart 3134—Bonding—General

§ 3134.1 Bonding.

(a) Prior to issuance of an oil and gas lease, the successful bidder shall furnish the authorized officer a corporate surety bond in the sum of $100,000 conditioned on compliance with all the lease terms, including rentals and royalties, conditions and any special stipulations. The bond shall not be required if the bidder already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms, conditions and special stipulations of all oil and gas leases held by the bidder within NPR–A.

(b) An operator's bond in the sum of $100,000 or $300,000 may be substituted at any time for the lessee's lease bond (provided there has been a designation of operator or agent or approved operating agreements). The operator's bond shall assume the responsibilities and obligations of the lessee for the entire leasehold in the same manner and to the extent as though he/she were the lessee.

(c) If as a result of a default, the surety on a $100,000 lease bond or a $300,000 NPR–A-wide bond makes payment to the United States of any indebtedness under a lease secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(d) A new $100,000 lease bond or $300,000 NPR–A-wide bond shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. In lieu of a new NPR–A-wide bond, the lessee may substitute a separate $100,000 bond for each lease within the time period authorized. Failure to post a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of all leases covered by the defaulted bond, except to the extent that a separate bond in lieu of a $300,000 NPR–A-wide bond has been filed within the time authorized. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee when not a party to the bond.

(e) The bonds required by this section are in addition to any other bonds the successful bidder may have filed or be required to file under subparts 3104 and 3318 of this title.

§ 3134.1-1 Form of bond.

All bonds furnished by a lessee shall be on a form approved by the Director.

§ 3134.1-2 Additional bonds.

The authorized officer may require the lessee to supply additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary to assure maximum protection of Special Areas.

Subpart 3135—Assignments, Transfers and Extensions

§ 3135.1 Assignments, transfers and extensions, general.

§ 3135.1-1 Assignments.

(a) Subject to approval of the authorized officer, a lessee may assign his/her lease(s), or any undivided interest therein, or any legal subdivision, to anyone qualified under §§ 3130.1 and 3132.4 of this title to hold a lease.

(b) Any approved assignment shall be deemed to be effective on the first day of the lease month following its filing in the proper BLM office, unless, at the request of the parties, an earlier date is specified in the approval.

(c) The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.

(d) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the Act.

§ 3135.1-2 Requirements for filing of transfers.

(a)(1) All instruments of transfer of lease or of an interest therein, including operating rights, subleases and assignments of record-title shall be filed in triplicate for approval. Such instruments shall be filed within 90 days from the date of final execution. The instruments of transfer shall include a statement, over the transferee's own signature, with respect to citizenship and qualifications as required of a bidder under § 3132.4 of this title and shall contain all of the terms and conditions agreed upon by the parties thereto. Carried working interests, overriding royalty interests or payments out of production or other interest may be created or transferred without approval.

(2) An application for approval of any instrument required to be filed shall not be accepted unless accompanied by a nonrefundable fee of $25. Any document not required to be filed by the regulations in this part but submitted for record purposes shall be accompanied by a nonrefundable fee of $25 per each lease affected. Such documents may be rejected by the authorized officer.

(b) An attorney-in-fact, on behalf of the holder of a lease, operating rights or sublease, shall furnish evidence of authority to execute the assignment or application for approval and the statement required by § 3132.5(g) of this title.

(c) Where an assignment creates separate leases, a bond shall be furnished covering the assigned lands in the amount prescribed in § 3134.1 of this title. Where an assignment does not create separate leases, the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

§ 3135.1-3 Separate filings for assignments.

A separate instrument of assignment shall be filed for each lease. When transfers to the same person, association or corporation, involving more than 1 lease are filed at the same time for approval, 1 request for approval and 1 showing as to the qualifications of the assignee shall be sufficient.

§ 3135.1-4 Effect of assignment of a particular tract.

(a) When an assignment is made of all the record title to a portion of the acreage in a lease, the assigned and retained portions are divided into

separate and distinct leases. Assignment shall not be made for less than a compact tract of not less than 640 acres nor shall less than a compact tract of not less than 640 acres be retained.

(b) Each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil or gas is produced in paying quantities from that segregated portion of the lease area or so long as drilling or well reworking operations, either actual or constructive, as approved by the Secretary, are conducted thereon.

§ 3135.1-5 Extension of lease.

(a) The term of a lease shall be extended beyond its primary term so long as oil or gas is produced from the lease in paying quantities or so long as drilling or reworking operations, actual or constructive, as approved by the Secretary, are conducted thereon.

(b) A lease may be maintained in force by directional wells drilled under the leased area from surface locations on adjacent or adjoining lands not covered by the lease. In such circumstances, drilling shall be considered to have commenced on the lease area when drilling is commenced on the adjacent or adjoining lands for the purpose of directional drilling under the leased area through any directional well surfaced on adjacent or adjoining lands. Production, drilling or reworking of any directional well shall be considered production or drilling or reworking operations on the lease area for all purposes of the lease.

Subpart 3136—Relinquishments, Terminations and Cancellations of Leases

§ 3136.1 Relinquishment of leases or parts of leases.

A lease may be surrendered in whole or in part by the lessee by filing a written relinquishment, in triplicate, with the Alaska State Office of the Bureau. No filing fee is required. In the case of partial relinquishments, neither the relinquished lands nor the retained lands shall be less than a compact tract of not less than 640 acres. Are linquishment shall take effect on the date it is filed subject to the continued obligation of lessee and the surety to make all payments due, including any accrued rental, royalties and deferred bonuses and to abandon all wells, and condition or remove other facilities on the lands to be relinquished to the satisfaction of the Director, U.S. Geological Survey.

§ 3136.2 Terminations.

Any lease on which there is no well capable of producing oil or gas in paying quantities shall terminate if the lessee fails to pay the annual rental in full on or before the anniversary date of such lease and such failure continues for more than 30 days after the notice of delinquent rental has been delivered by registered or certified mail to the lease owner's record post office address.

§ 3136.3 Cancellation of leases.

(a) Any nonproducing lease may be canceled by the authorized officer whenever the lessee fails to comply with any provisions of the Acts cited in § 3130.0–3 of this title, of the regulations issued thereunder or of the lease, if such failure to comply continues for 30-days after a notice thereof has been delivered by registered or certified mail to the lease owner's record post office address.

(b) Producing leases or leases known to contain valuable deposits of oil or gas may be canceled only by court order.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
October 15, 1981.

[FR Doc. 81-32088 Filed 11-6-81; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[Circular No. 2493]

Application Procedures; Alaska Oil and Gas Leasing

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), § 1821.2–1, subpart 1826, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as follows.

PART 1820—APPLICATION PROCEDURES

§ 1821.2–1 [Amended]

1. Paragraph (d) is amended by:

(a) Amending Office and Area of Jurisdiction of the Alaska State Office to read: Alaska State Office, 701 "C" Street, Box 13, Anchorage, Alaska 99513—Southern Alaska, plus *all* oil and gas leasing.[1]

(b) Amending Office and Area of Jurisdiction of the Fairbanks District Office to read: Fairbanks District Office, N. Post of Ft. Wainwright, P.O. Box 1150, Fairbanks, Alaska 99707—Northern Alaska except for oil and gas leasing.[1]

(c) Amending the address of the Colorado State Office to read: Colorado State Office, 1037 20th Street, Denver Colorado 80202—Colorado.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
November 25, 1981.

[FR Doc. 81-34432 Filed 11-30-81 8:45 am]
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Circular Distribution List

GPO 834 • 155

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100 and 3110

[Circular No. 2494]

Oil and Gas Leasing; Increase in Filing Fees Accompanying Noncompetitive Oil and Gas Lease Applications and Rental Increase for Simultaneous Oil and Gas Leases

Under the authority of the Omnibus Budget Reconciliation Act of 1981, and the Mineral Lands Leasing Act of 1920, as amended, 30 U.S.C. 181 *et seq.*, Parts 3100 and 3110, Group C, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below.

PART 3100—OIL AND GAS LEASING

§ 3103.1-3 [Amended]

1. Section 3103.1–3 is amended by removing the figure "$25" where it appears and replacing it with the figure "$75".

§ 3103.2-1 [Amended]

2. Section 3103.2–1(a) is amended by removing the figure "$25" where it appears and replacing it with the figure "$75".

3. Section 3103.3–2 is amended by adding a new paragraph (f) as follows:

§ 3103.3-2 [Amended]

* * * * *

(f) An annual rental of $1 per acre or fraction thereof for each of the first 5 years and $3 per acre or fraction thereof thereafter shall be paid on all leases issued under Subpart 3112 of this title after the effective date of this rulemaking. During the first 5 years of the lease the rental is subject to increase under paragraph (b)(1) of this section. However, paragraph (b)(1) is not applicable to leases for which the annual rental is $3.

PART 3110—NONCOMPETITIVE LEASES

§ 3111.1-3 [Amended]

1. Section 3111.1–3(a) is amended by removing the figure "$25" where it appears and replacing it with the figure "$75".

§ 3111.2-2 [Amended]

2. Section 3112.2–2(a) is amended by removing the figure "$25" where it appears and replacing it with the figure "$75".

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 8, 1982.

[FR Doc. 82–1436 Filed 1–19–82; 8:45 am]

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Circular Distribution List

GPO 834 - 156

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3200

[Circular No. 2495]

Geothermal Resources Leasing; General

Under the authority of the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025), Part 3200, Group 3200, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3200—GEOTHERMAL RESOURCES LEASING; GENERAL

1. Section 3201.2(b) is amended by adding two new sentences to the end of the introductory text as follows:

§ 3201.2 Acreage limitations.

* * * * *

(b) * * * Where the United States owns a present fractional interest in the geothermal resources in the leased lands, only that portion of the total acreage currently owned by the United States shall be charged as acreage holdings. The acreage embraced in a future interest lease shall not be chargeable as acreage holdings until the future interest vests in the United States.

* * * * *

§ 3202.2-7 [Removed]

2. Section 3202.2-7 is removed in its entirety.

3. Section 3205.3-4 is revised to read as follows:

§ 3205.3-4 Fractional interests.

Rentals and minimum royalties payable under leases for lands in which the United States owns only an undivided present or future fractional interest shall not be prorated, but shall be paid for the full acreage in the leased lands. However, royalty on production from such lands shall be payable in the same proportion to the royalty provided for in § 3205.3-5 of this title as the undivided fractional interest of the United States in the geothermal resources is to the full geothermal resources interest.

4. A new Subpart 3207 is added as follows:

Subpart 3207—Leases for a Fractional or Future Interest

Sec.

3207.1 General.
3207.2 Noncompetitive leases.
3207.2-1 Qualifications.
3207.2-2 Applications.
3207.2-3 Leasing.
3207.2-4 Agency action on applications.
3207.3 Competitive leasing.
3207.3-1 Nominations for leases.
3207.3-2 Leasing

Authority: Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025).

Subpart 3207—Leases for a Fractional or Future Interest

§ 3207.1 General.

Leases for lands in which the United States owns only a fractional or future interest in geothermal resources may be issued whenever the public interest will be best served thereby. Where the United States owns both a present and a future interest in the geothermal resources in a tract, these interests may be leased separately or together at the discretion of the authorized officer.

§ 3207.2 Noncompetitive leases.

§ 3207.2-1 Qualifications.

Qualifications for noncompetitive lease applicants for either a fractional present or future interest in geothermal resources will be the same as those appearing in Subpart 3202 of this title with the exception that applicants for a lease of a noncompetitive future interest shall own, hold, or control at least 50 percent of the present operating rights in the geothermal resources.

§ 3207.2-2 Applications.

Applications for a noncompetitive lease for either a fractional present or future interest in geothermal resources owned by the United States shall be filed and adjudicated in accordance with Subpart 3210 of this title except for qualifications in § 3207.2-1 of this title. In addition, such applications shall include:

(a) A statement describing the extent of the applicant's present or future operating rights to the geothermal resources in a tract other than those resources owned by the United States in the lands covered by the application, together with:

(1) A certified abstract of title or certificate of title containing record evidence of the creation of such interest(s) in the geothermal resources (abstracts will be returned to the applicant when final action has been taken on the application), and

(2) A copy of the lease or contract if the applicant has acquired any of the operating rights to the described interest(s).

(b) The name of the Government agency administering the surface lands that must consent before a lease can be issued; or

(c) The name of the agency that may have records establishing ownership of the geothermal resources involved; and

(d) Identification of the project, if any, of which the lands are a part.

(Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information required in § 3207.2-2 of this title does not require clearance by the Office of Management and Budget since there are less than ten respondents annually)

§ 3207.2-3 Leasing.

(a) A lease of a fractional present interest shall contain the same terms and conditions, including the rentals, as are included in leases for lands in which the United States owns the full interest in the geothermal resources. The acreage of the lease shall be chargeable according to § 3201.2 of this title.

(b) A lease of a future Federal geothermal interest shall become effective on the date that the interest in the geothermal resources vests in the United States. The terms and conditions of the lease shall be the same as for a noncompetitive lease of a present interest issued under this part. The acreage in the lease shall become

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Circular Distribution List

chargeable according to § 3201.2 of this title when the lease becomes effective.

(c) As consideration for the issuance of a lease of a future Federal gecthermal interest, the applicant for a noncompetitive lease shall execute an interim agreement on a form approved by the Director, Bureau of Land Management. This agreement shall govern the relationship between the lessee and the United States until the date the lease becomes effective. The agreement shall provide that:

(1) The applicant pay a minimum annual rental of $1 per acre or fraction thereof until the future interest of the United States becomes possessory; and

(2) When a present interest in geothermal resources is relinquished, terminated, or cancelled, the interim agreement or lease of a future interest on the parcel involved shall be deemed to have been relinquished, terminated, or cancelled in the same manner and to the same degree; and

(3) No assignment of the interim agreement and the lease of a future interest shall be approved without a concurrent transfer, to the same extent and to the same party, of the rights to the present interest in the leased lands.

(d) The authorized officer shall not:

(1) Issue leases requiring consent of a Government agency until the applicant executes stipulations required by the consenting agency.

(2) Issue a lease for the Federal interests in the geothermal resources on a parcel to a person who, with the Federal interest, would control less than 50 percent of all interest in the operating rights to the geothermal resources in a parcel, unless the Secretary determines it is in the public interest to do so.

§ 3207.3 Competitive leasing.

§ 3207.3–1 Nominations for leases.

No special form is required for requests or nominations of eligible parcels. Nominations or requests to have leases offered competitively for lands known to contain geothermal resources shall, to the extent possible, include the information required for noncompetitive leases under § 3207.2–2 of this title.

§ 3207.3–2 Leasing.

(a) Fractional or future interests in geothermal resources owned by the United States in lands situated within a KGRA shall only be available for leasing under the provisions of this subpart and the provisions of subpart 3220 of this title.

(b) A lease of a future interest will become effective on the date that the interest in the geothermal resources vests in the United States. Its terms and conditions, including rental and royalty payments, shall be the same as for a lease of a present interest issued competitively under Subpart 3220 of this title. The acreage in the lease shall become chargeable according to § 3201.2 of this title when the lease becomes effective.

(c) Prior to the issuance of a lease of a future interest, the highest bona fide bidder shall execute an interim agreement on a form approved by the Director, Bureau of Land Management which will govern the relationship between the lessee and the United States until the date the lease becomes effective. The agreement shall require payment of an annual interim rental at the same rate as specified under the terms of the lease of the future interest.

(d) If the controlling owner or holder of the present rights in an offered tract, is not the high bidder at the lease sale, such party shall be given an opportunity to meet the highest bona fide bid submitted for the tract. Failure to do so within the time allowed, or failure to submit any bid for the offered tract, shall be considered a waiver of all rights to the competitive lease and the lease shall be awarded to the highest qualified bidder. In the event there are two or more holders of a present interest in an offered tract who have equal rights and are willing to meet the highest bona fide bid on the offered tract, the right to meet the highest bona fide bid shall be determined by a drawing conducted by the authorized officer within 30 days after the bids are opened. These provisions are in addition to the provisions under § 3220.6 of this title.

(e) The authorized officer shall not issue leases requiring consent of a Government agency until the highest bona fide bidder executes stipulations required by the consenting agency.

David C. Russell,
Acting Assistant Secretary of the Interior.
January 19, 1982.

[FR Doc. 82–2826 Filed 2–2–82; 8:45 am]
BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1780

[Circular No. 2496]

Advisory Committee; Cooperative Relations

Under the authority of the Federal Advisory Committee Act (5 U.S.C. Appendix 1) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Subpart 1784, Part 1780, Group 1700, Subchapter A, Chapter II, Subtitle B of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 1780—COOPERATIVE RELATIONS

§ 1784.3 [Amended]

1. Section 1784.3 is amended by:

(A) Revising paragraph (a) to read:

(a) Elections to grazing advisory boards shall be for 2-year terms unless a shorter period is specified in the charter. Individuals may be re-elected to additional 2-year terms without limit.

* * * * *

(B) Redesignating paragraphs (b), (c) and (d) as paragraphs (e), (f) and (g).

(C) Adding new paragraphs (b), (c) and (d) to read:

* * * * *

(b) Appointment to district advisory councils shall be on a staggered-term basis. In 1982, for councils comprising 10 members, 3 members shall be appointed to terms expiring December 31, 1982, 3 members shall be appointed to terms expiring December 31, 1983, and 4 members shall be appointed to terms expiring December 31, 1984. For the California Desert District Advisory Council, which comprises 15 members, five members shall be appointed to each of the terms ending December 31, 1982, December 31, 1983, and December 31, 1984. All subsequent appointments, to all councils, shall be made for 3-year terms. Vacancies occurring by reason of removal, resignation, death or loss of elected office shall be filled for the balance of the vacating member's term using the same method by which the original appointment was made. At the discretion of the Secretary, members may be reappointed to additional terms, not to exceed a total of 6 years.

(c) Appointment to the National Public Lands Advisory Council shall be on a staggered-term basis. Initial appointments in 1982 shall be made in the following fashion: 7 members shall be appointed for terms expiring December 31, 1982; 7 members shall be appointed for terms expiring December 31, 1983; and 7 members shall be appointed for terms expiring December 31, 1984. Subsequent appointments shall be made for 3-year terms. At least one member shall be an elected official of general purpose government. Vacancies occurring by reason of removal, resignation or death shall be filled for the balance of the vacating member's term using the same methods by which the original appointment was made. At the discretion of the Secretary, members may be reappointed to additional terms. The Council shall elect its own officers.

(d) Elections or appointments to all other advisory bodies shall be for two-year terms unless a shorter period is specified in the charter, the election procedures, or the appointing document. Terms of service normally coincide with duration of the committee charter. Members may be appointed to additional terms at the discretion of the authorizing appointing official."; and

* * * * *

§ 1784.6-1 [Amended]

2. Section 1784.6-1(a) is revised to read:

* * * * *

(a) From nominations by individuals, national organizations and associations concerned with problems related to planning for and management of lands under the jurisdiction of the Bureau of Land Management, the Director will submit to the Secretary a list of citizens recommended for membership on the National Public Lands Advisory Council. From this list or other sources, the Secretary shall appoint to the Council 21 persons who are qualified through education, training or experience to give informed and objective advice concerning land use and resource policy, planning, and management for the public lands.

* * * * *

Garrey E. Carruthers,

Assistant Secretary of the Interior.

December 23, 1981.

[FR Doc. 82-3798 Filed 2-11-82; 8:45 am]

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Circular Distribution List

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3110, and 3130

[Circular No. 2497]

Amendments to the Regulations Covering Oil and Gas Leasing on Federal Lands

Under the authority of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), Part 3100, Group 3110, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3100—OIL AND GAS LEASING

1. Subpart 3102 is revised to read:

Subpart 3102—Qualifications of Lessees

Sec.
3102.1 Who may hold leases.
3102.2 Aliens.
3102.3 Minors.
3102.4 Signatures.
3102.5 Evidence.

Authority: Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

Subpart 3102—Qualifications of Lessees

§ 3102.1 Who may hold leases.

Leases may be acquired and held only by citizens of the United States; associations (including partnerships) of such citizens; corporations organized under the laws of the United States or of any State or territory thereof; and municipalities.

§ 3102.2 Aliens.

Leases or interests therein may be acquired and held by aliens only through stock ownership, holding or control; and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. (A list of those countries which have been determined to provide "similar or like" privileges is available from any Bureau of Land Management office).

§ 3102.3 Minors.

Leases shall not be acquired or held by an individual considered a minor under the laws of the State in which the lands are located, but leases may be acquired and held by legal guardians or trustees of minors in their behalf.

§ 3102.4 Signatures.

All applications, offers and requests for approval of an assignment shall be holographically (manually) signed in ink by the potential lessee or by anyone authorized to sign on behalf of the potential lessee. Documents signed by anyone other than the potential lessee shall be rendered in a manner to reveal the name of the potential lessee, the name of the signatory and their relationship. (Example: John Smith, agent for Mary Jones; or ABC Corporation, agent for Mary Jones by John Smith.) Machine or rubber stamped signatures shall not be used.

§ 3102.5 Evidence.

Submission of a lease application, offer or request for approval of an assignment constitutes certification of compliance with the regulations of this group and the Act. Compliance means that the potential lessee, all other parties who hold an interest (as defined in § 3100.0–5(a) of this title) in the application, offer, assignment or lease or all parties who hold or control more than 10 percent interest in a lessee which is a corporation or association are: (a) Citizens of the United States or qualified stockholders in a domestic corporation (see § 3102.2 of this title); (b) in compliance with the Federal acreage limitations (see §§ 3101.1–5 and 3101.2–4 of this title); (c) not minors (see § 3102.3 of this title); and (d) not participants in any agreement, scheme, plan or arrangement prohibited in relation to simultaneous oil and gas leasing (see § 3112.6–1(a) of this title). Anyone seeking to acquire, or anyone holding, a Federal oil or gas lease or interest therein, may be required to submit additional information to show compliance with the regulations of this group and the Act.

2. Section 3103.1–1 is revised to read:

§ 3103.1–1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency. Remittances returned unpaid shall be assessed a $10 service charge. Applicants shall be barred from acquiring leases until the returned remittance is redeemed and the service charge paid.

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Circular Distribution List

3. Sections 3106.1 through 3106.1–3 are revised and §§ 3106.1–4 through 3106.1–6 are removed to read:

§ 3106.1 General.

§ 3106.1–1 What may be required.

Leases may be assigned as to all or part of the lease acreage and as to either a divided or undivided interest therein.

§ 3106.1–2 Qualifications.

Assignees shall comply with subpart 3102 of this title and post any bond which may be required.

§ 3106.1–3 Heirs and devisees.

If an offeror, applicant, assignee or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a statement that all parties are qualified to hold a lease in accordance with subpart 3102 of this title.

§§ 3106.1–4—3106.1–6 [Removed]

§ 3106.2–1 [Amended]

4. Section 3106.2–1 is amended by removing the phrase "must be filed" after the figure "§ 3106.4" and replacing it with the phrase "of this title shall be filed within 90 days from the date of final execution."

5. Section 3106.2–2 is revised to read:

§ 3106.2–2 Forms.

(a) Assignments of record title or operating rights shall be filed in triplicate with the proper BLM office on a form approved by the Director or reproductions thereof. A separate instrument of assignment shall be used for each lease out of which an assignment is made.

(b) A single signed copy of all other instruments of transfer shall be sufficient.

PART 3110—NONCOMPETITIVE LEASES

§ 3112.2–2 [Amended]

6. Section 3112.2–2(a) is revised to read:

(a) Each filing shall be accompanied by a $75 filing fee.

* * * * *

7. Section 3112.2–3 is revised to read:

§ 3112.2–3 Qualifications.

Compliance with subpart 3102 of this title is required. The applicant shall set forth on the lease application, or on a separate accompanying sheet, the names of all other parties who hold an interest (as defined in § 3100.0–5(a) of this title) in the application, or the lease, if issued.

§ 3112.6–1 [Amended]

8. Section 3112.6–1(b) is revised to read:

* * * * *

(b) The application of any unqualified applicant shall be rejected.

PART 3130—OIL AND GAS LEASING—NATIONAL PETROLEUM RESERVE—ALASKA

9. Section 3132.4 is revised to read:

§ 3132.4 Qualifications.

Submission of a lease bid constitutes certification of compliance with the regulations of this part. Anyone seeking to acquire, or anyone holding, a Federal oil and gas lease or interest therein may be required to submit additional information to show compliance with the regulations of this part.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

February 11, 1982.

[FR Doc. 82–5408 Filed 2–25–82; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3110, and 3130

[Circular No. 2497]

Amendments to the Regulations Covering Oil and Gas Leasing on Federal Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim final rulemaking.

SUMMARY: This interim final rulemaking will dramatically reduce the regulatory burden imposed on the public and the Department of the Interior in connection with the noncompetitive oil and gas leasing program by eliminating from current regulations: (1) The requirement that simultaneous oil and gas lease application filing fees be paid by guaranteed remittance; (2) the mandatory use of pre-numbered assignment forms for the transfer of oil and gas leases; and (3) the requirement to submit documents related to qualifications prior to lease acquisition.

EFFECTIVE DATE: February 26, 1982.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240. Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles Weller; (202) 343–7722.

SUPPLEMENTARY INFORMATION: For several years, the Federal Government's noncompetitive oil and gas leasing effort has not kept pace with the demand for access to the public lands for oil and gas development. The Bureau of Land Management, in coordination with the Forest Service, the Minerals Management Service, the Department of Defense and other agencies, is aggressively pursuing initiatives designed to provide access to lands more quickly so that the United States can realize the fullest potential of its domestic resources. One major way to provide quicker access is to speed the process of lease issuance by eliminating unnecessary procedures which have been developed over time. Elimination of these procedures also allows significant savings to the public by reducing the amount of information that must be submitted in conjunction with oil and gas leasing.

This final interim rulemaking eliminates the requirement that simultaneous oil and gas lease application filing fees be paid by guaranteed remittance. This requirement has caused significant confusion to the public and the Bureau of Land Management as to what constitutes a guaranteed remittance, has resulted in a number of administrative appeals and has burdened the public out of proportion to the problem of bad checks that it was designed to address. In the future, the Bureau will use normal collection procedures for uncollected remittances instead of requiring all applicants to use particular forms of remittances.

This interim final rulemaking also eliminates the mandatory use of prenumbered assignment forms for the transfer of oil and gas leases. This requirement was imposed in May of 1980 in response to the preliminary indications of a criminal investigation that as much as 80 percent of all simultaneous oil and gas lease applications were fraudulent. More conclusive evidence from the ongoing investigation indicates that the extent of the problem was grossly overestimated. With this new perspective, the impediments to lease development which resulted from the required use of pre-numbered forms are not justified. The Department of the Interior is confident that the ongoing investigative effort under the Office of the Inspector General is sufficient to detect fraudulent manipulation of the leasing process should it reoccur.

Another change made by this final interim rulemaking would be the elimination of the requirement that documents relating to qualifications be submitted in conjunction with lease applications and assignments by trusts, associations, corporations, agents, other-parties-in-interest and municipalities. These documents were originally required in order to allow monitoring of Federal acreage limitations, foreign investment restrictions, multiple filing in the simultaneous oil and gas leasing program and the existence of agency relationships. The increase in the size of the program has rendered impossible the manual monitoring of these qualification documents. In the future, all lease applicants and assignees will be required to certify their compliance with statutory requirements on the lease or assignment application, subject to the criminal sanctions of 18 U.S.C. 1001 regarding fraudulent statements. Selective audits will be performed to verify compliance. Elimination of the requirement to submit these qualifications documents will save the public an estimated $20 million annually.

The Department of the Interior has determined that it is in the public interest to discontinue processing the thousands of qualifications documents presently on file. Compliance with the statute and regulations has been certified on all pending lease applications and assignments on the appropriate forms. Selective audits will verify compliance. Pending applications and offers for which there are no junior conflicting applications or offers pending on this date will not be subject to rejection for any failure to comply with the rules in Subpart 3102 of Title 43 of the Code of Federal Regulations in effect at the time of filing. All such failures are waived by promulgation of this rulemaking with respect to all requirements altered or eliminated by the rulemaking.

The Department of the Interior has determined that the public interest demands that the measures contained in this interim final rulemaking must be implemented immediately so as to speed the development of domestic oil and gas resources and to ease the regulatory burden on the public. Accordingly this rulemaking is being issued as an interim final rulemaking upon its publication. The changes made by this interim final rulemaking will also be published as part of the rewrite of Group 3100 of Title 43 of the Code of Federal Regulations that will be published in the near future. The public is requested to comment on the provisions of this rulemaking and these comments will be studied and considered at the time of decisionmaking on the issuance of a final rulemaking on Group 3100 of Title 43 of the Code of Federal Regulations.

Further, the Department of the Interior has determined that it is in the public interest to make this interim final rulemaking effective upon publication. The public will be benefitted by the reduction in paperwork burden immediately by making the rulemaking effective upon publication.

The principal author of this interim final rulemaking is Charles Weller, Division of Oil and Gas, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The information collection requirements contained in this amendment to 43 CFR Part 3100 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0034 and 0075.

Under the authority of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), Part 3100, Group 3110, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

February 11, 1982.

PART 3100—OIL AND GAS LEASING

1. Subpart 3102 is revised to read:

Subpart 3102—Qualifications of Lessees

Sec.

3102.1 Who may hold leases.
3102.2 Aliens.
3102.3 Minors.
3102.4 Signatures.
3102.5 Evidence.

Authority: Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

Subpart 3102—Qualifications of Lessees

§ 3102.1 Who may hold leases.

Leases may be acquired and held only by citizens of the United States; associations (including partnerships) of such citizens; corporations organized under the laws of the United States or of any State or territory thereof; and municipalities.

§ 3102.2 Aliens.

Leases or interests therein may be acquired and held by aliens only through stock ownership, holding or control; and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. (A list of those countries which have been determined to provide "similar or like" privileges is available from any Bureau of Land Management office).

§ 3102.3 Minors.

Leases shall not be acquired or held by an individual considered a minor under the laws of the State in which the lands are located, but leases may be acquired and held by legal guardians or trustees of minors in their behalf.

§ 3102.4 Signatures.

All applications, offers and requests for approval of an assignment shall be holographically (manually) signed in ink by the potential lessee or by anyone authorized to sign on behalf of the potential lessee. Documents signed by anyone other than the potential lessee shall be rendered in a manner to reveal the name of the potential lessee, the name of the signatory and their relationship. (Example: John Smith, agent for Mary Jones; or ABC Corporation, agent for Mary Jones by John Smith.) Machine or rubber stamped signatures shall not be used.

§ 3102.5 Evidence.

Submission of a lease application, offer or request for approval of an assignment constitutes certification of compliance with the regulations of this group and the Act. Compliance means that the potential lessee, all other parties who hold an interest (as defined in § 3100.0–5(a) of this title) in the application, offer, assignment or lease or all parties who hold or control more than 10 percent interest in a lessee which is a corporation or association are: (a) Citizens of the United States or qualified stockholders in a domestic corporation (see § 3102.2 of this title); (b) in compliance with the Federal acreage limitations (see §§ 3101.1–5 and 3101.2–4 of this title); (c) not minors (see § 3102.3 of this title); and (d) not participants in any agreement, scheme, plan or arrangement prohibited in relation to simultaneous oil and gas leasing (see § 3112.6–1(a) of this title). Anyone seeking to acquire, or anyone holding, a Federal oil or gas lease or interest therein, may be required to submit additional information to show compliance with the regulations of this group and the Act.

2. Section 3103.1–1 is revised to read:

§ 3103.1–1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency. Remittances returned unpaid shall be assessed a $10 service charge. Applicants shall be barred from acquiring leases until the returned remittance is redeemed and the service charge paid.

3. Sections 3106.1 through 3106.1–3 are revised and §§ 3106.1–4 through 3106.1–6 are removed to read:

§ 3106.1 General.

§ 3106.1–1 What may be required.

Leases may be assigned as to all or part of the lease acreage and as to either a divided or undivided interest therein.

§ 3106.1–2 Qualifications.

Assignees shall comply with subpart 3102 of this title and post any bond which may be required.

§ 3106.1–3 Heirs and devisees.

If an offeror, applicant, assignee or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a statement that all parties are qualified to hold a lease in accordance with subpart 3102 of this title.

§§ 3106.1–4—3106.1–6 [Removed]

§ 3106.2–1 [Amended]

4. Section 3106.2–1 is amended by removing the phrase "must be filed" after the figure "§ 3106.4" and replacing it with the phrase "of this title shall be filed within 90 days from the date of final execution."

5. Section 3106.2–2 is revised to read:

§ 3106.2–2 Forms.

(a) Assignments of record title or operating rights shall be filed in triplicate with the proper BLM office on a form approved by the Director or reproductions thereof. A separate instrument of assignment shall be used for each lease out of which an assignment is made.

(b) A single signed copy of all other instruments of transfer shall be sufficient.

PART 3110—NONCOMPETITIVE LEASES

§ 3112.2–2 [Amended]

6. Section 3112.2–2(a) is revised to read:

(a) Each filing shall be accompanied by a $75 filing fee.

* * * * *

7. Section 3112.2–3 is revised to read:

§ 3112.2–3 Qualifications.

Compliance with subpart 3102 of this title is required. The applicant shall set forth on the lease application, or on a separate accompanying sheet, the names of all other parties who hold an interest (as defined in § 3100.0–5(a) of this title) in the application, or the lease, if issued.

§ 3112.6–1 [Amended]

8. Section 3112.6–1(b) is revised to read:

* * * * *

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3420

[Circular No. 2498]

Amendments to Competitive Leasing Regulations of Coal Management Program

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 et seq.), the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.) and the Multiple Mineral Development Act (30 U.S.C. 521–531), Part 3420, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3420—COMPETITIVE LEASING

1. Section 3422.2(c)(10) is revised to read:

§ 3422.2 [Amended]

* * * * *

(c) * * *

(10) If appropriate, contain (i) a copy of any written qualified surface owner consent, including purchase price, financial obligations and terms and conditions, filed and verified prior to the posting of the notice of lease sale in the appropriate Bureau of Land Management State office; or (ii) a listing of lands for which qualified surface owner consent is required prior to lease sale but has not yet been filed, along with a statement that any consent for those lands filed prior to the deadline for such filings shall be made a part of the official file and shall be available for inspection by the public;

2. Section 3427.1 is revised to read:

§ 3427.1 Deposits subject to consent.

On split estate lands (43 CFR 3400.0–5) where the surface is owned by a qualified surface owner, coal deposits that will be mined by methods other than underground mining techniques shall not be included in a lease sale without evidence of written consent from the qualified surface owner (43 CFR 3400.0–5) allowing entry and commencement of surface mining operations.

3. Section 3427.2 is amended by:

a. Revising paragraph (a)(1) to read:

§ 3427.2 [Amended]

(a)(1) Each written consent or evidence of written consent shall be filed with the appropriate Bureau of Land Management State office (43 CFR Subpart 1821). For lands offered for lease sale pursuant to Subpart 3420 of this title, consents or written evidence thereof shall be filed on or before a date prior to the lease sale specified in a notice published in the **Federal Register**. For lands offered for lease sale pursuant to Subpart 3425 of this title, consents or written evidence thereof shall be filed prior to the posting of the lease sale notice.

* * * * *

(b) Amending paragraph (f) by removing the word "transferable";

(c) Revising paragraph (g) to read:

* * * * *

(g) The applicable conditions of paragraphs (e) and (f) of this section shall be met prior to the lease sale for the lands to which the consents apply.

* * * * *

(d) Revising paragraph (i) to read:

* * * * *

(i) The purchase price of any applicable written consent from a qualified surface owner submitted and verified prior to posting of the notice of lease sale shall be included with the description of the tract(s) in the notice of lease sale, and the other terms of the consent shall be included in the detailed statement of the tract sale. Any consent filed after posting of the notice of lease sale shall be placed in the official file for the lease tract(s) to which the consent applies and shall be available for inspection by the public in the appropriate Bureau of Land Management State office (43 CFR Subpart 1821).

* * * * *

4. Section 3427.4 is revised to read:

§ 3427.4 Pre-existing consents.

An otherwise valid written consent given by a qualified surface owner prior to August 4, 1977, shall not be required to meet the transferability provisions of § 3427.2(e)(1) of this part.

David C. Russell,

Assistant Secretary of the Interior.

February 24, 1982.

[FR Doc. 82-5670 Filed 3-1-82; 8:45 am]

BILLING CODE 4310-84-M

Published in 47 F.R. 9008, March 3, 1982 - Effective March 3, 1982.

Circular Distribution List

GPO 834-619

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2499]

43 CFR Part 1820

Execution and Filing of Forms; Amendment to Provisions on Office Hours: Place for Filing

Under the authority of section 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 1820—APPLICATION PROCEDURES

1. Section 1821.2–1 is amended by:

(a) Revising paragraphs (a) and (d) to read:

§ 1821.2–1 Office hours; place for filing.

(a) The hours during which the offices set forth in paragraph (d) of this section shall be open to the public for the filing of applications and other documents and the inspection of records shall be prominently displayed in each office.

* * * * *

(d) The Bureau of Land Management has redelegated authority to District and Area Offices for processing certain types of public lands disposal and use authorization applications. In those instances where delegation has been made to the District or Area Office from the State Office, applications shall be filed with the District or Area Office having responsibility for the public lands covered by the requested action. Accordingly, applicants, prior to the filing of an application, should contact the State, District or Area Office of the Bureau of Land Management in their immediate vicinity or for the geographic area in which the public lands being applied for are located. The locations of the offices are as follows:

State Office and Area of Jurisdiction

Alaska State Office, 701 'C' Street, Box 13, Anchorage, Alaska 99513—Southern Alaska [1]

Fairbanks District Office, North Post of Ft. Wainwright, P.O. Box 1150, Fairbanks, Alaska 99707—Northern Alaska [1]

Arizona State Office, 2400 Valley Bank Center, Phoenix, Arizona 85073—Arizona

California State Office, Federal Building, 2800 Cottage Way, Sacramento, California 95825—California

Colorado State Office, 1037 Twentieth Street, Denver, Colorado 80202—Colorado

Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304—Arkansas, Iowa, Louisiana, Minnesota, Missouri and all States east of the Mississippi

Idaho State Office, Federal Building, 550 West Fort Street, Box 042, Boise, Idaho 83724—Idaho

Montana State Office, Granite Tower, 222 North 32nd Street, P.O. Box 30157, Billings, Montana 59107—Montana, North Dakota and South Dakota

Nevada State Office, Federal Building, 300 North Booth Street, Reno, Nevada 89509—Nevada

New Mexico State Office, U.S. Post Office and Federal Building, South Federal Place, Santa Fe, New Mexico 87501—New Mexico, Oklahoma and Texas

Oregon State Office, 729 Northeast Oregon Street, Portland, Oregon 97208—Oregon and Washington

Utah State Office, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111—Utah

Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001—Wyoming, Kansas and Nebraska

District and Area Offices

A list of the name, address and jurisdiction of all District and Area Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

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[1] See diagram for division line.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
March 8, 1982.

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